

United States  
Circuit Court of Appeals  
For the Ninth Circuit. 10

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E. WAGNER and SON, INCORPORATED,  
a corporation,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of the Record

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Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

FEB - 4 1937

PAUL P. O'BRIEN,



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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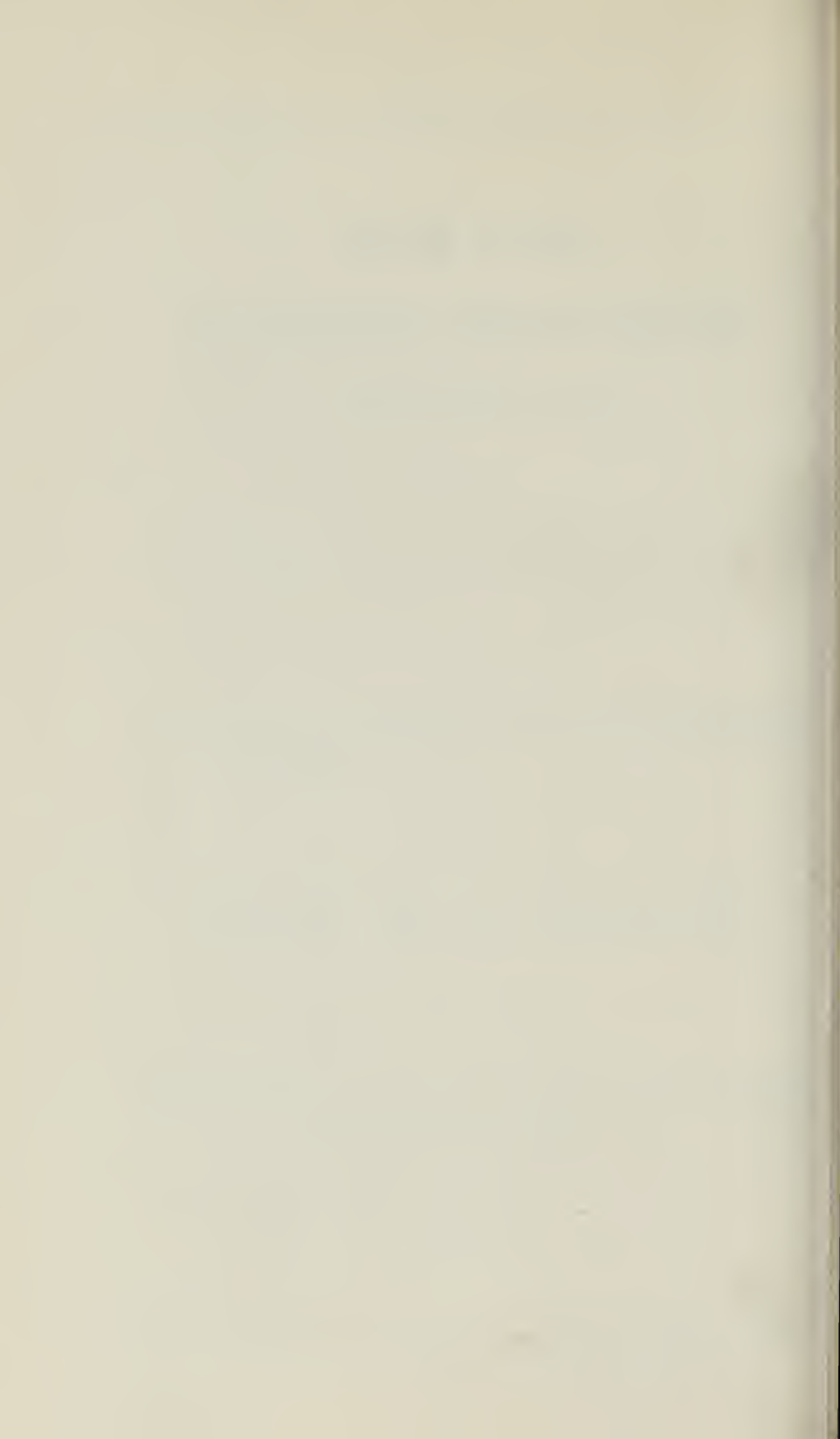
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES:

For Taxpayer:

ANDREW G. ELDER, Esq.,  
JOSEPH NIEVINSKI, Esq.

For Comm'r:

T. CALLAHAN, Esq.,  
S. B. ANDERSON, Esq.

Transferred to Mr. Murdock 3/7/36.

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Docket No. 65845

E. WAGNER & SON, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1932

- May 7—Petition received and filed. Taxpayer notified. (Fee paid.)
- May 9—Copy of petition served on General Counsel.
- Jun. 21—Answer filed by General Counsel.
- Aug. 24—Copy of answer served on taxpayer. Circuit Calendar.
- Sept. 3—Motion to make answer more definite and certain filed by taxpayer. 9/22/32 copy served.
- Sept. 20—Hearing set Oct. 5, 1932 on motion.

1932

- Oct. 7—Notice of change of hearing date from 10-5-32 to 10-26-32.
- Oct. 26—Hearing had before Mr. Smith on petitioner's motion to make answer more definite and certain—Denied.
- Oct. 26—Order that motion to make answer more definite and certain be denied—entered.

1934

- July 14—Hearing set week of Sept. 4, 1934 at Seattle, Wash.
- Sept. 11—Hearing had before Mr. S. J. McMahon, Div. 16. Submitted on merits. Pet's brief due 12/11/34. Resp's 12/29/34. Pet's reply 1/19/35.
- Oct. 9—Transcript of hearing of Sept. 11, 1934, filed.
- Dec. 10—Brief filed by taxpayer. 12/11/34 copy served.
- Dec. 28—Memo reply brief filed by General Counsel.

1935

- Jan. 18—Reply brief filed by taxpayer. 1/19/35 copy served.

1936

- May 26—Memorandum findings of fact and opinion rendered. John E. Murdock, Div. 3. Decision will be entered under Rule 50.
- Jun. 17—Notice of settlement filed by General Counsel.
- Jun. 19—Hearing set July 8, 1936, under Rule 50.



1936

- Jun. 29—Consent to settlement filed by taxpayer.
- July 6—Decision entered, J. E. Murdock, Div. 3. [1\*]
- Oct. 5—Supersedeas bond in the amount of \$2,666.88 approved and ordered filed.
- Oct. 5—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- Oct. 5—Affidavit of service of petition for review and notice filed.
- Oct. 6—Proof of service of petition for review filed.
- Nov. 30—Agreed statement of evidence lodged.
- Dec. 1—Agreed statement of evidence approved and ordered filed.
- Dec. 3—Praecipe with proof of service thereon filed by taxpayer.
- Dec. 3—Order extending time for transmission and delivery of record to January 15, 1937, entered. [2]

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 65845

E. WAGNER & SON, INC., a corporation,  
 Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
 Respondent.

### PETITION

Comes now the above-named petitioner and hereby petitions for a redetermination of the deficiency and penalty set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing symbols IT:E:Aj PWH-19624-60D, dated March 12, 1932, and as a basis of this proceeding alleges as follows:

#### I.

The petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Washington with its principal office at Wenatchee, Washington.

#### II.

The deficiency letter, a copy of which is attached hereto and marked "Exhibit A", was mailed to the petitioner on March 12, 1932. [3]

#### III.

The taxes in controversy are income taxes for the year 1929 in the sum of.....	\$2,543.44,
plus a negligence penalty of 5% in the amount of.....	127.17
	<hr/>

making a total amount in controversy in the sum of.....\$2,670.61.

## IV.

The determination of the taxes set forth in the said notice of deficiency is based upon the following errors:

1. The Commissioner erred in failing to allow the petitioner to deduct its ordinary and necessary expenses including a reasonable allowance for compensation for personal services actually rendered. The Commissioner refused to allow the taxpayer to deduct the sum of \$20,000.00, which was paid and/or incurred, to E. WAGNER and OTTO H. WAGNER, employees and officers, as compensation for personal services actually rendered during the year 1929.

2. The Commissioner erred in failing to allow the petitioner to deduct interest in the amount of \$2,750.00 which was paid and/or incurred during the year 1929 on loans to the petitioner by its officers and employees and on unpaid balances left with the company during the year. [4]

3. The Commissioner erred in failing to allow a loss sustained during the year 1929 in the amount of \$1,233.42 in a transaction entered into with the Wenatchee White Sales Company, which said loss was not compensated for by insurance or otherwise and was incurred in the trade or business of the petitioner and was also incurred in a transaction entered into for profit.

4. The Commissioner erred in finding that

there was an understatement of tax for the year 1929 and in finding that the petitioner was guilty of negligence, and in asserting a five (5%) percent negligence penalty.

### STATEMENT OF FACTS

The facts upon which the petitioner relies as a basis of this proceeding, are as follows:

1. The petitioner was incorporated in the year 1924, under and by virtue of the laws of the State of Washington, having its principal office at Wenatchee, Washington.

2. During the year in question the entire capital stock of the petitioner was owned in equal amounts by E. WAGNER, the President, and OTTO H. WAGNER, the Secretary and Treasurer. [5]

3. During the year 1929, the petitioner owned and operated a sawmill in Okanogan County, Washington, and also owned, managed and developed a real estate subdivision.

4. E. WAGNER was the President of the petitioner, and also a trustee. He had the management of the real estate in Wenatchee, Washington, where the petitioner was developing a subdivision, selling lots and tracts and furnishing building materials to purchasers. He also acted as consultant in the management of the sawmill business and assisted in the financial operations and in marketing the petitioner's products. He devoted his entire time to the business of the petitioner.

5. OTTO H. WAGNER was the Secretary and Treasurer of the petitioner. Among other things his duties consisted of the purchasing of the timber, machinery and supplies. He also assisted E. WAGNER in the financing of the petitioner's operations and marketing of its products and had general supervision of the petitioner's operations in the woods, mill and factory. He devoted all of his time to the business of the petitioner.

6. During the year 1929 the Board of Trustees of the petitioner voted to pay to E. WAGNER and to OTTO H. WAGNER for their services for the year 1929 the sum of TEN THOUSAND (\$10,000.00) DOLLARS, each, and it was agreed between the petitioner and each of said [6] parties that such compensation would be paid for the year 1929. During the latter part of September 1929, after due consideration, the Board of Trustees passed a resolution to pay to said E. WAGNER and OTTO H. WAGNER a bonus of \$3,000.00 each as additional compensation for their services during the year 1929. The Commissioner disallowed officers salaries in the amount of \$20,000.00 as stated in his deficiency letter on the alleged ground that "they were not paid or incurred within the taxable year."

7. The amount of \$13,000.00 was no more than a reasonable compensation for the personal services actually rendered to the petitioner during the year 1929 by the said E.

WAGNER and OTTO H. WAGNER and the petitioner actually agreed to pay said sums during the year 1929 to each of said parties. Both of said parties and their respective wives reported the said entire amounts as income for the year 1929 in their personal income tax returns for the year 1929 and paid tax thereon.

8. From the date of its incorporation petitioner was in need of working capital and both the said E. WAGNER and OTTO H. WAGNER left on hand with the petitioner undrawn portions of their salary and wages and also made various loans to the petitioner. In connection [7] with its bank loans, the petitioner was paying and was obligated to pay interest at the rate of 10 percent per annum. The legal rate of interest in the state of Washington in the absence of an agreement to the contrary was and is six (6) percent. In the month of August of 1929 the Board of Trustees voted to allow interest on all moneys left in the business and also on moneys loaned to the petitioner inasmuch as the petitioner was relieved of borrowing said money elsewhere on which it was paying the rate of 10%. Although no set rate of interest was mentioned in said resolution it was understood that the rate charged by the local banks would govern. Figured on minimum monthly balances, the petitioner incurred, during the year 1929, an obligation for interest to E. WAGNER and OTTO H. WAGNER in the amount of \$2,750.00,

which amount the Commissioner refused to allow as stated in his deficiency letter on the following alleged ground:

“4. Interest in the amount of \$2,750.00 has been disallowed since it did not accrue within the taxable year.”

9. In April 1929, the petitioner contracted with the Wenatchee White Sales Company for two (2) White motor trucks at \$5,525.00 each. The contract called for payment with apple box shook at 14.21¢ [8] per box; and shook in the full contract price at the agreed rates was duly shipped and delivered to the Sales Company. The petitioner credited on its books to sales the entire amount at said agreed price. Before the end of 1929, the said Wenatchee White Sales Company failed and refused to apply on petitioner's contract the sum of \$1,233.42. In the meantime the Wenatchee White Sales Company had sold, transferred and negotiated the conditional sales contracts which the petitioner had signed on the two trucks and the petitioner was required to pay the full contract price to the assignee. The said Sales Company was unable to meet said indebtedness of \$1,233.42 in 1929 or at any subsequent time and by reason thereof petitioner sustained a loss of \$1,233.42 for which it was never compensated.

10. The petitioner acted in good faith in preparing its income tax return for the year 1929 and was not guilty of negligence.

WHEREFORE, the petitioner prays that this Board may hear this proceeding and grant it relief from the determination of the respondent by finding and adjudging that there is no deficiency in tax for the year 1929; and that the petitioner [9] has made an overpayment of tax for the year 1929 and for such other and further relief as to the Board may seem just and equitable.

(s) ANDREW G. ELDER

(s) JOSEPH NIEVINSKI

Attorneys for Petitioner,  
705-6 Dexter Horton Building,  
Seattle, Washington.

State of Washington  
County of Okanogan—ss.

OTTO H. WAGNER, being first duly sworn on oath deposes and says: That he is the Secretary and Treasurer of E. WAGNER & SON, INC., a corporation, the petitioner above-named, and as such is authorized to verify the foregoing petition. That he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true except as to those facts stated to be upon information and belief and those facts he believes to be true.

(s) OTTO H. WAGNER

Subscribed and sworn to before me this 30th day of April, 1932.

[Notary Seal] (s) H. GORDON KERR  
Notary Public in and for the State of Washington,  
residing at Okanogan.



For Exhibit "A" referred to herein, see Exhibit "1", attached to Statement of Evidence.

[Endorsed]: Filed May 7, 1932. [10]

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[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(1) to (4) incl. Denies errors in the action recited in subparagraphs (1) to (4), inclusive, of paragraph 4 of the petition.

5(1) to (10) incl. Denies each and every allegation of fact contained in subparagraphs (1) to (10), inclusive, of paragraph 5 of the petition which is inconsistent with and contrary to the determination of the Commissioner as stated in the notice of final determination of deficiency dated March 12, 1932.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted or denied.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) C. M. CHAREST  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel:

THOS. F. CALLAHAN,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed June 21, 1932. [11]

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[Title of Court and Cause.]

Joseph Nievinski, Esq., for the petitioner.

S. B. Anderson, Esq., for the respondent.

#### MEMORANDUM FINDING OF FACTS AND OPINION.

The Commissioner determined a deficiency in income tax for the year 1929 in the amount of \$2,543.44 and a penalty of 5 per cent for negligence in the amount of \$127.17. The petitioner abandoned one of its assignments of error at the hearing. The issues are: (1) the amount which the petitioner is entitled to deduct as a reasonable allowance for salaries or compensation of its officers; (2) whether it is entitled to deduct certain amounts as interest accrued on loans from its officers and on undrawn salaries and bonuses of such officers; and (3) whether any part of the deficiency is due to negligence. [12]

## FINDINGS OF FACT

The petitioner is a corporation of the State of Washington. E. Wagner and his son, Otto H. Wagner, at all times material to this proceeding, owned all of its stock in equal proportions. The former was president and the latter was secretary and treasurer and general manager. They were also the trustees or directors of the petitioner and devoted their entire time to the management of its business. The petitioner's books were kept on an accrual basis.

E. Wagner and Otto H. Wagner, as trustees of the petitioner, held two meetings during 1929 for the purpose of considering the subject of their compensation as officers. They decided in June, 1929, that they should receive an annual salary of \$10,000 each for 1929 and subsequent years. They decided in September, 1929, that they should receive a bonus of \$3,000 each for the services performed during 1929. No minutes or other written record or memorandum was made of the action taken at these meetings. The petitioner after the close of the year in closing its books for the year 1929, made entries under date of December 31, 1929, debiting officers' salaries in the amount of \$26,000 and crediting E. Wagner in the amount of \$13,000 and Otto H. Wagner in the amount of \$13,000. The petitioner claimed a deduction in its return on account of compensation of its officers in the amount of \$26,000. The Commissioner disallowed \$20,000 of the amount so claimed.

A reasonable allowance for salaries or other compensation for personal services actually rendered to the petitioner during the year 1929 is \$4,000 in the case of E. Wagner and \$10,000 in the case of Otto H. Wagner. [13]

E. Wagner and Otto H. Wagner made loans to the petitioner prior to and during 1929, and, in addition to those loans, they left with the petitioner parts of their salaries for years prior to 1929. Interest for the year 1929 on those amounts, computed at the rate of 6 per cent, amounts to \$1,228.69. E. Wagner and Otto H. Wagner did not withdraw any of the salary or bonus authorized by the petitioner for the year 1929. E. Wagner and Otto H. Wagner, as trustees, never had any meetings with reference to the allowance by the corporation of interest on any of the loans or undrawn salaries and bonuses, nor did they ever as individuals enter into any agreement with the petitioner respecting the allowance or payment of interest thereon. The determination of the petitioner to allow interest on these amounts was first made in April, 1930, when its books were being closed for the year 1929. At that time the petitioner made entries under date of December 31, 1929, debiting interest in the amount of \$2,750 with the explanation "interest accrued on loans from officers" and crediting E. Wagner in the amount of \$500, and Otto H. Wagner in the amount of \$2,250. In its return for the year 1929 the petitioner claimed a deduction for interest in the amount of \$4,759.53.

The Commissioner disallowed \$2,750 of the amount claimed.

The Commissioner determined that the petitioner was negligent in understating its tax and asserted a penalty of 5 per cent under section 293(a) of the Revenue Act of 1928. No part of the deficiency was due to negligence, or intentional disregard of rules and regulations.

### OPINION

MURDOCK: The Commissioner allowed \$6,000 and disallowed \$20,000 of [14] the amount claimed by the petitioner as a deduction for officers' salaries. The petitioner has assumed the burden of showing not only that the salaries claimed were authorized during the year 1930, but also that they represented reasonable compensation for the personal services actually rendered by the officers. The assumption of this full burden of proof was proper. The evidence shows that the total amount of \$26,000 was actually authorized at two meetings of the two Wagners. They were the only officers and the only stockholders of the corporation. Their salaries in past years ranged from \$2,000 to \$4,000 each. No dividends had ever been paid. The circumstances justify close scrutiny to see that earnings were not being distributed in the guise of salaries.

The principal business of the corporation was the operation of a box factory. The volume of business of the box factory increased very materially during the year 1929. Double shifts were

employed for a part of the year. Otto H. Wagner was in charge of the box factory. The services which he performed in the taxable year were considerably greater than were the services which he had performed in prior years. The evidence as a whole indicates that a reasonable salary for the services which he performed during the year would be \$10,000.

E. Wagner, an elderly man and father of Otto H. Wagner, was in charge of some real estate operations of the company at a point some distance from the box factory. He had been similarly engaged in prior years. The evidence does not indicate that there was any substantial increase in the duties performed by him or in the volume of business handled by him. He also had some duties in connection with the business of the box factory. The evidence does not show that he devoted any more of his time to the box factory [15] business or performed substantially heavier duties in connection with that business in 1929 than in former years. In fact he was away from the business for the latter part of the year. The highest salary that he had received in prior years was \$4,000. The evidence does not justify a larger amount as reasonable compensation for his services during 1929.

The next question is to determine whether the petitioner is entitled to a deduction for interest accrued in excess of \$2,009.53, the amount allowed by the Commissioner. The petitioner claimed an additional amount of \$2,750. The record does not adequately explain how any of these amounts was

determined. The petitioner included interest at 10 per cent in computing the deduction which it claimed. Interest at 6 per cent on loans and undrawn salaries for prior years may have been included by the Commissioner in the deduction of \$2,009.53 which he allowed. Interest at 6 per cent on loans and undrawn salaries of prior years would be a proper deduction. But interest at a higher rate would not be proper in the absence of an express agreement to pay some certain rate. The petitioner claims also some interest on the salaries and bonuses for the current year, but the evidence does not indicate that any part of the salaries or bonuses was payable prior to the end of the year. The petitioner has failed to prove that it is entitled to any larger deduction for interest than the amount allowed by the Commissioner.

The final issue in regard to negligence is settled by the findings of fact. The evidence indicates that no part of the deficiency is due to negligence or intentional disregard of the rules and regulations.

Reviewed by the Board.

Decision will be entered under Rule 50.

Entered May 26, 1936: [16]

McMAHON, concurring in part and dissenting in part: I concur in the holding of the majority that no part of the deficiency is due to negligence or intentional disregard of the rules and regulations and that therefore no penalty should be asserted; and I agree that the evidence should be closely scrutinized.

I dissent from the holding of the majority that a reasonable allowance for salaries or other compensation for personal services actually rendered to the petitioner during 1929 is \$4,000 in the case of E. Wagner and \$10,000 in the case of Otto H. Wagner. After having considered the entire record it is my opinion that it should be found as a fact and held that the amount of \$13,000 was reasonable compensation for the personal services actually rendered petitioner by each of those officers in the year in question.

The facts that the compensation paid to the Wagners was in proportion to their stock interests and that no dividends were ever declared or paid by petitioner are not fatal to petitioner's contention, under all the facts and circumstances here. It is apparent that the reason dividends were never declared or paid is that the business was expanding and the funds of the petitioner were needed for that purpose. The compensation of the two Wagners in years prior to 1929 for even lesser services rendered by them in those years was small for this same reason; and the evidence shows that in such prior years these men were underpaid.

The evidence shows that the petitioner's first big year of operation was 1929, and that by that time the business of the mill had grown to such an extent that petitioner employed a double shift commencing June 1, 1929. No double shift had been needed and no lots had been subdivided and sold before: The superintendent employed by petitioner in a lesser capacity than that of either of the Wag-



ners drew compensation for 1929 in a total amount of approximately [17] \$7,200. He put in about half the time that each of the Wagners were putting in. It is true that E. Wagner was forced to take a trip on account of his health in the latter part of 1929 but this was due to a breakdown in health caused by overwork. Furthermore, it was after the working season of the petitioner was over. Petitioner's operations are seasonal and its most active business season is from April until October or November. E. Wagner was founder and president of petitioner; and, among others, his duties for petitioner consisted in part in transforming unprofitable orchard property of petitioner into salable town lots and tracts and building homes thereon. Petitioner's principal office was located at Wenatchee, where he resided. He also assisted in financing the building of houses. His duties also included selling box shooks made at the factory and lumber, at Wenatchee; and he frequently made trips to Okanagon, where the factory was located, about ninety miles away, to confer with his son as to the policies to be employed in both branches of petitioner's business. In 1929 there were 20 to 30 men working under his supervision at Wenatchee. He also helped in scouting timber for the factory and saw mill. He devoted all his time to the petitioner's business in 1929 and worked both by day and by night. E. Wagner was more experienced in business than Otto H. Wagner. In prior years, 1906 to 1917, he had earned in the saw mill business at least \$40,000 per year. Otto

H. Wagner was secretary, treasurer and general manager of petitioner.

The evidence shows that in the executive and administrative end of the mill business the petitioner, during 1929, had the two Wagners and a bookkeeper, that during two months in the summertime this bookkeeper had an assistant, that competitors of the petitioner having businesses similar to that of the petitioner usually have seven or eight employees in the administrative and executive end of their businesses, and that the petitioner would have had at least [18] two employees for the Wenatchee operations and five for the mill operations in the administrative and executive end of the work if it had conducted its business along the line of others similarly situated.

The evidence shows that the gross sales of petitioner in 1929 amounted to \$221,723.63, and that its final return for the year 1929 shows gross income of \$74,642.42, total deductions of \$61,972.37, including \$26,000 as a deduction for compensation of the Wagners, net income of \$12,670.05, and tax due of \$1,063.71.

The record fails to disclose evidence to support a finding of fact or holding that a reasonable allowance as compensation for services rendered by the Wagners for the year 1929 is less than \$13,000 each. The witnesses for petitioner were intelligent, candid and in all respects credible; their testimony was not impeached; and no countervailing evidence

was offered by respondent. Petitioner has established a prima facie case, at least, upon this issue.

I also dissent from the holding of the majority that petitioner has failed to prove that it is entitled to any larger deduction for interest than \$2,009.53, the amount allowed by the respondent. The evidence shows that during the year 1929 the petitioner owed E. Wagner and Otto H. Wagner amounts representing advances and undrawn compensation. At the hearing counsel for respondent stated that there was no objection to showing what the computation of interest would be at six per cent and exhibits showing the same were received in evidence without objection. Counsel for respondent reserved only the right to question the right of petitioner to any deduction for interest, and his sole ground was that there was no agreement to pay interest. From the reporter's transcript of what occurred at the hearing it is clear that counsel for the respondent agreed to the receipt of the exhibits in evidence for the purpose of showing the amount of interest due in the event that the Board should hold that there was liability on the part of petitioner to pay interest. The transcript is in part as follows: [19]

Mr. ANDERSON (Respondent's Atty.):  
Your Honor, I do not understand the real purpose of this offer. What does it purport to show? Counsel states it is interest. I will admit that, and I will admit that the figures were taken from the books, but I would like to

have counsel explain what the purpose of the offer is.

Mr. NIEVINSKI (Petitioner's Atty.): It is for the purpose of showing the interest due on advances and on salaries.

Mr. ANDERSON: I have no objection to showing what the computation of interest would be at six per cent \* \* \*.

Mr. NIEVINSKI: That is all there is here, a statement showing that.

Mr. ANDERSON: With that reservation I have no objection to its going in.

In the notice of deficiency respondent stated that "Interest in the amount of \$2750. has been disallowed since it did not *accrue* within the taxable year." (Emphasis supplied.) Furthermore, the witness who prepared the exhibits testified that the items of loans and undrawn compensation included in such exhibits are correct and were taken from the books as closed for the year 1929. Respondent makes no contention anywhere in the record that the liability for the principal amounts was not incurred and owing as represented in such exhibits. In his brief upon this issue he relies solely upon the proposition that no interest was incurred for the reason that there was no agreement and, hence, no liability to pay interest. The transcript also discloses that respondent's counsel had examined these exhibits the day before the hearing and that the books were produced at the hearing. In such exhibits the liabilities for the salaries were treated as having ac-

erued monthly and the liabilities for bonuses were treated as having accrued as of October 1, 1929. In the majority opinion it is stated that the evidence does not indicate that any part of the salaries or bonuses was payable prior to the end of the year. The books, as closed, show that the salaries were payable monthly, and that the bonuses were payable on October 1, 1929, and respondent has made no contention to the contrary. In fact, as stated, he in effect agreed that the exhibits were correct, and such exhibits treat the compensation as payable prior to the close of the year. Furthermore, in the absence of any agreement to the contrary, it is the [20] universal custom to treat salaries as accruing monthly even though they are fixed at a yearly rate. Otherwise, people dependent upon their salaries would be unable to meet living expenses. In neither the case of the salary nor the case of the bonus is interest claimed before the date on which the payment was duly authorized and respondent has raised no question as to this. The bonuses were payable forthwith; and being on the accrual basis, they were accruable when authorized, and the salaries were accruable at the end of each month. There is nothing in the record to require or justify a failure or refusal to accept these exhibits for the purpose for which they were offered and received. The exhibits show that the interest which accrued within the year 1929 upon the loans and forbearances of E. Wagner and Otto H. Wagner at the rate of six per cent amounted to \$404.89 and \$1,338.84, respectively. These figures are based on allowances

of \$13,000 as reasonable compensation for each of the Wagners for 1929, in addition to loans.

It is true that there was no agreement ever made between the petitioner and the Wagners providing for the payment of interest, and the question for determination is whether, in this situation, interest accrued upon this indebtedness within the year 1929 within the meaning of section 23(b) of the Revenue Act of 1928.

In *George D. Davidson Co. of Cal.*, 14 B. T. A. 91, we defined the word "accrue" in connection with similar provisions of the Revenue Act of 1921 as follows:

To "accrue" means to come into existence; to accumulate to become vested; Standard Dictionary, Webster's Dictionary; Bouvier's Law Dictionary; Words and Phrases Judicially defined. In the sense in which the word is used in the above statute, interest deductible as accruing in any taxable year means interest which has come into existence, has become vested, during such taxable year. [21]

Section 7299 of Volume 2 of Remington's Compiled Statutes of Washington, 1922<sup>1</sup>, provides that

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(1) § 7299. Every *loan or forbearance* of money, goods, or thing in action shall bear interest at the rate of six per centum per annum where no different rate is agreed to in writing between the parties. The discounting of commercial paper, where the borrower makes himself liable as a maker, guarantor or indorser, shall be considered as a loan for the purposes of this chapter. \* \* \* (Emphasis supplied)

where no different rate of interest *in* agreed to in writing by the parties every loan or forbearance of money shall bear interest at the rate of six per cent.

The word "forbearance" is defined in Black's Law Dictionary, Third Edition, as follows:

**FORBEARANCE.** The art of abstaining from proceeding against a delinquent debtor; delay in exacting the enforcement of a right, indulgence granted to a debtor. *Reynolds v. Ward*, 5 Wend. (N. Y.) 504; *Diercks v. Kennedy*, 16 N. J. Eq. 211; *Dry Dock Bank v. American Life Ins. Etc., Co.* 3 N. Y. 354.

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to "act".

This Washington statute is specifically designed to operate where there is no agreement as to interest and, of course, the lack of an agreement here as to interest is, therefore, not fatal to petitioner's claims. Under this statute of the State of Washington, in the instant proceeding there were both loans and forbearances of money; and interest at the rate of six per cent accrued within the taxable year 1929 upon the loans (*Dornberg v. Black Carbon Coal Co.*, 93 Wash. 682, 161 P. 845) and forbearances of money (*Bonner v. Billings*, 107 Wash. 1, 181 Pac. 19, and *Dornberg v. Black Carbon Coal Co.*, *supra.*) Such interest is deductible by petitioner in such year. It does not matter that the amounts were not actually accrued on the books

of the petitioner during the taxable year. It is elementary that books entries or lack of them are not controlling. The facts control. Furthermore, these books, as closed, show such interest. [22]

In the majority opinion it is stated that interest at six per cent on loans and undrawn salaries for prior years may have been included by the Commissioner in the deduction of \$2,009.53 which he allowed for 1929, and that the petitioner has failed to prove that it is entitled to any larger deduction for interest than the amount allowed by the Commissioner. This is not sufficient reason for denying the petitioner a deduction for the amount of interest which is properly deductible. No issue is raised as to what the respondent did or did not do in this respect. So far as the record shows the amounts of interest shown on the exhibits are in addition to the amounts already allowed by the respondent for the year 1929; in any event, the respondent does not question that this is so; on the contrary, he admits this, as heretofore fully pointed out. It is shown by the evidence that petitioner did have other interest to pay during 1929, in addition to its interest obligations to the Wagners. In 1929 bankers advanced petitioner credit for payrolls in the maximum amount of \$15,000. Petitioner generally was required to pay interest upon bank loans at the rate of 10 per cent discounted in advance, although it did at an undisclosed time secure some money in Seattle



at 8 per cent. Any necessary adjustment can be made in the recomputation under Rule 50.

The parties have, in reality, and very properly, submitted to us the narrow issue as to whether the lack of an agreement to pay interest defeats the deduction and as stated above it does not. The parties should be allowed some reasonable latitude in the presentation of issues to this Board and when a narrow issue, such as we have here, is presented, the Board should not go beyond that and decide something not contemplated by the parties. The rule applicable to the Federal courts, which review our decisions, thus limits them. (*General Utilities & Operating Co. v. Helvering*, 56 S. Ct. 185;) and a similar rule should [23] be applied to this Board in respect to its own decisions. In any event, petitioner has established a prima facie case as to the amount of deductible interest, which has not been overcome by respondent.

If the Wagners had disposed of their stock interests in the petitioner and had ceased to be officers or employees thereof and a question had arisen as to their rights to collect the advances and undrawn compensation together with the interest thereon, upon the showing made in the instant proceeding, they could, in a suit in a proper tribunal, have recovered the full amounts thereof because they are valid obligations. Furthermore, the amounts claimed for compensation are reasonable amounts for the personal services actually rendered by each of them.

Since I presided at the hearing in this proceeding, I deem it my duty to thus fully set forth my views. The evidence could be further quoted in support of the foregoing statements as to the proof, but, in the interests of brevity, I forego doing so.

LEECH concurs in the above dissent in so far as it refuses to sustain the Commissioner's disallowance of the salary items. [24]

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UNITED STATES BOARD OF TAX APPEALS.

Docket No. 65845.

E. WAGNER & SON, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the Board's Memorandum Findings of Fact and Opinion, entered May 26, 1936, the respondent on June 17, 1936, having filed a proposed computation, and the petitioner on June 29, 1936, having filed notice of acquiescence to the said computation, it is

ORDERED and DECIDED that there is a deficiency for the year 1929 in the amount of \$1,333.44.

(Signed) J. E. MURDOCK

Member, United States  
Board of Tax Appeals.

Entered July 6, 1936. [25]

[Title of Court and Cause.]

PETITION OF E. WAGNER & SON, INC., FOR  
REVIEW BY THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT OF A DECISION BY  
THE UNITED STATES BOARD OF TAX  
APPEALS.

E. Wagner & Son, Inc., the petitioner in this cause, by Andrew G. Elder and Cyril D. Hill, counsel, hereby files its petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by the United States Board of Tax Appeals rendered on July 6, 1936, 34 BTA ....., No. ....., determining deficiencies in the petitioner's Federal income tax for the calendar year 1929 in the amount of \$1333.44, and respectfully shows:

I.

The petitioner, E. Wagner & Son, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, with its principal office in Okanogan, Washington. [26]

The income tax return of the said corporation for the taxable year 1929 was duly filed within the time provided therefor, with the Collector of Internal Revenue for the District of Washington, within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

## II.

## NATURE OF THE CONTROVERSY

The controversy involves the proper determination of the petitioner's liability for Federal income tax for the calendar year 1929.

Mr. E. Wagner was president of the petitioner corporation at all times material to these proceedings, and Otto H. Wagner was secretary, treasurer and general manager. They were also the trustees and devoted their entire time to the management of its business. The petitioner's books were kept on an accrual basis.

Mr. E. Wagner and Otto H. Wagner, as trustees of the petitioner, held two meetings during 1929 for the purpose of considering their compensation. They decided in June, 1929, that they should receive a salary of \$10,000.00 each for 1929 and subsequent years. At the meeting held in September, 1929, it was decided that they should each receive a bonus of \$3,000.00 for services performed during 1929. The total sum of \$13,000.00 for Mr. E. Wagner and a like sum for Otto H. Wagner were reasonable values for personal services rendered by these men during the year 1929. The petitioner claimed a deduction in its income tax return for the calendar year 1929 [27] on account of compensation paid its officers in the amount of \$26,000.00. The Commissioner of Internal Revenue disallowed \$20,000.00 of the amount claimed. Upon petition for redetermination the Board allowed \$10,000.00 for Otto H. Wagner and \$4,000.00 for E. Wagner.

Mr. E. Wagner and Otto H. Wagner made loans to the petitioner prior to and during 1929, and in addition thereto, they left undrawn with the petitioner part of their salaries for the years prior to 1929. They also left undrawn their salaries and bonuses authorized by the petitioner for the year 1929. Interest on these amounts was deducted by the petitioner in its income tax return for the calendar year 1929. The Commissioner of Internal Revenue allowed interest during this year on loans made prior to 1929, and on undrawn salaries of these officers of the petitioner for years prior to 1929. However, the Commissioner of Internal Revenue disallowed interest in the amount of \$2,750.00 representing interest on loans made to petitioner during 1929, and upon salaries and bonuses left with the petitioner for the year 1929, which action was sustained by the Board.

### III.

The said petitioner being aggrieved by the findings of fact and conclusions of law contained in said findings and opinion of the United States Board of Tax Appeals, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit. [28]

### IV.

#### ASSIGNMENTS OF ERROR

The petitioner assigns as error the following acts and omissions of the United States Board of Tax Appeals:

(1) The finding that a reasonable allowance as compensation for services rendered by E. Wagner for the year 1929 was less than \$13,000.00, is unsupported by any evidence.

(2) The finding that a reasonable allowance as compensation for services rendered by Otto H. Wagner for the year 1929 less than \$13,000.00, is unsupported by any evidence.

(3) The finding that petitioner is not entitled to the deduction from petitioner's gross income for the year 1929, of the sum of \$13,000.00 for compensation for personal services rendered by E. Wagner, is unsupported by any evidence.

(4) The finding that petitioner is not entitled to the deduction from petitioner's gross income for the year 1929 of the sum of \$13,000.00 for compensation for personal services rendered by Otto H. Wagner, is unsupported by any evidence.

(5) The finding that petitioner is not entitled to the deduction of \$2,906.22 (corrected amount instead of \$2,750.00) interest at 10% (the contract rate) paid on loans and undrawn salaries for 1929, is unsupported by any evidence.

(6) The finding that petitioner is not entitled to a deduction of at least \$1,743.73 interest at 6% (the statutory rate in the State of Washington) on loans and undrawn salaries for 1929, is unsupported by any evidence.

(7) The findings of fact are not supported by the evidence. [29]

(8) The findings of fact are contrary to the evidence.

(9) The finding that the interest disallowed by respondent related to other than undrawn salaries and bonuses payable for services rendered in 1929, and loans made to petitioner during 1929, is unsupported by any evidence.

(10) The failure to allow as a deduction from the petitioner's gross income for the year 1929 the sum of \$13,000.00 for compensation for personal services rendered by E. Wagner.

(11) The failure to allow as a deduction from the petitioner's gross income for the year 1929 the sum of \$13,000.00 for compensation for personal services rendered by Otto H. Wagner.

(12) The failure to determine that the sum of \$13,000.00 was a reasonable allowance for compensation for personal services of E. Wagner for the year 1929.

(13) The failure to determine that the sum of \$13,000.00 was a reasonable allowance for compensation for personal services of Otto H. Wagner for the year 1929.

(14) The failure to allow as a deduction from the petitioner's gross income for the year 1929 the sum of \$2,906.22 (corrected amount instead of \$2,750.00) interest at 10% (the contract rate) paid on loans to the petitioner by its officers and on unpaid balances left with the company during the year. [30]

(15) The failure to allow as a deduction from the petitioner's gross income for the year 1929 at least the sum of \$1,743.73 interest at 6% (the statutory rate in the State of Washington) on loans

to the petitioner by its officers and on unpaid balances left with the company during the year.

(16) The finding of a deficiency for the year 1929 instead of the determination that there is no deficiency in income tax for the said year.

(s) ANDREW G. ELDER

(s) CYRIL D. HILL

Attorneys for Petitioner  
1261 Dexter Horton Building  
Seattle, King County, Washington

State of Washington,  
County of King.—ss.

ANDREW G. ELDER, being first duly sworn upon oath deposes and says: The he is counsel of record in the above named cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read [31] the said petition, and is familiar with the statements contained therein, and that the statements made are true to the best of his knowledge, information and belief.

(s) ANDREW G. ELDER

Subscribed and sworn to before me this 29 day of September, 1936.

(s) WILLIAM A. BOWLES

Notary Public in and for the State of Washington,  
residing at Seattle.

[Endorsed]: Filed Oct. 5, 1936. [32]



[Title of Court and Cause.]

### STATEMENT OF EVIDENCE

The above-entitled cause was heard before the United States Board of Tax Appeals at Seattle, Washington, the Honorable Stephen J. McMahon presiding, on September 11, 1934. The following represents a statement of the evidence introduced at such hearing:

A copy of the deficiency letter in this case dated March 12, 1932, was received in evidence without objection and marked Petitioner's Exhibit 1.

MR. ALFRED T. CARNE,

being called by petitioner as a witness having been first duly sworn, testified as follows:

#### Direct Examination

My name is Alfred T. Carne, residing at Okanogan, Washington. I am the bookkeeper of the petitioner, E. Wagner & Son, Inc., and have been associated with this concern since 1911 with some intermissions. I kept the books and made up income tax returns for the years 1924 to 1930 inclusive. I have here the books that show the salaries of E. Wagner and Otto H. Wagner for these years. The salaries of Mr. E. Wagner were:

\$ 2,000.00	in 1924
2,000.00	in 1925 [33]
4,000.00	in 1926
2,000.00	in 1927
2,000.00	in 1928
13,000.00	in 1929 and
10,000.00	in 1930

(Testimony of Alfred T. Carne.)

The salaries of Mr. Otto H. Wagner were:

\$ 2,000.00	in 1924
2,000.00	in 1925
4,000.00	in 1926
2,000.00	in 1927
2,000.00	in 1928
13,000.00	in 1929 and
10,000.00	in 1930

These books show the gross sales of the company:

\$ 20,101.34	in 1924
50,650.17	in 1925
94,197.21	in 1926
95,484.67	in 1927
143,880.41	in 1928
221,723.63	in 1929 or less freight and allowances, \$209,140.59.

Whereupon there was identified the tentative income tax return for E. Wagner & Son, Inc., for 1929, the same being marked for identification as "Petitioner's Exhibit No. 2".

I prepared Petitioner's Exhibit 2 in Seattle. I was employed during 1929 by Fix and Latimer and was not in petitioner's office during 1929 and 1930. However, I was employed by petitioner to close the books, make up income tax returns and submit a balance sheet. I secured the information for the tentative return for 1929 over the telephone from Mr. Otto H. Wagner. I made it out in my own handwriting and I think I mailed it to him. I did not take the usual and customary deductions that

(Testimony of Alfred T. Carne.)

are taken for a corporation as I probably did not have the information before me.

Whereupon there was identified the corporation income tax return [34] of E. Wagner & Son, Inc., for the year 1929, the same being marked for identification as "Petitioner's Exhibit No. 3".

I prepared Petitioner's Exhibit 3, the corporation income tax return for the year 1929. It is in my handwriting. It was prepared in Seattle. Mr. Otto Wagner came to Seattle and furnished me with books and papers with the information. He told me the salaries of E. Wagner and Otto H. Wagner for 1929 were \$10,000 a year each and there was a bonus of \$3000. I was a little surprised. I do not remember anything being said about officers salaries in making the tentative return. He told me of these salaries before I completed my computation of determining the income tax for the year 1929.

Whereupon there was identified the original cash book and journal, pages J 147, J 148, J 149, J 150, of which were then marked "Petitioner's Exhibit No. 5", which was admitted in evidence and is hereby included and will be designated as a part of this statement of evidence.

Petitioner's Exhibit 5 consists of pages J 147, J 148, J 149, J 150 from the original cash book and journal subsequently used by me in the nature of a memorandum for subsequent transcription to the journal. On page number J 147 is a memorandum of information that Mr. Wagner gave me in 1930

(Testimony of Alfred T. Carne.)

at the time I prepared the final report for 1929. The third closing entry for 1929 on this page refers to salaries for 1929. There are sixteen subsequent entries on this page. At the time I made the third entry I was not in a position to compute the income tax for 1929. [35]

I have prepared a computation of the advances to the company by Mr. E. Wagner and Mr. Otto H. Wagner and the amounts of their undrawn salaries left with the company. I have computed the interest at six per cent and at ten per cent on those balances due at that time.

Whereupon there was identified the computations of advances, undrawn salaries and interest thereon, of E. Wagner and of Otto H. Wagner, the same being marked for identification as "Petitioner's Exhibit No. 6", and "Petitioner's Exhibit No. 7", respectively.

Petitioner's Exhibit 6 for identification is prepared from the books of the company. The first column under the heading "Amount" indicates the balance that the company was indebted to Mr. E. Wagner. The first twelve items in this column do not take into account any salary for E. Wagner for the year 1929. Below these items I have computed the undrawn salary of Mr. E. Wagner for 1929. Under the heading of "Interest" I have computed first on the advances made by Mr. E. Wagner to the corporation prior to January 1, 1929, at six per cent for the entire year 1929 under the heading "six per cent", and at ten per cent.

(Testimony of Alfred T. Carne.)

I have separately computed thereon the interest that would be due at six per cent on the undrawn salary of Mr. E. Wagner for the year 1929 and also at ten per cent.

The books on which this is based are here.

“Mr. NIEVINSKI (For Petitioner): I will offer that in evidence, if your Honor please, as Petitioner’s Exhibit No. 6.

“Mr. ANDERSON (For Respondent): Your Honor, I do not [36] understand the real purpose of this offer. What does it purport to show? Counsel states it is interest. I will admit that, and I will admit that the figures were taken from the books, but I would like to have counsel explain what the purpose of the offer is.

“Mr. NIEVINSKI: It is for the purpose of showing the interest due on advances and on salaries.

“Mr. ANDERSON: I have no objection to showing what the computation of interest would be at six per cent and at ten per cent.

“Mr. NIEVINSKI: That is all there is here, a statement showing that.

“Mr. ANDERSON: With that reservation I have no objection to its going in.”

Whereupon Exhibit No. 6, previously identified, was admitted in evidence, and is hereby included, and will be designated as a part of this statement of evidence.

(Testimony of Alfred T. Carne.)

I have also computed exactly in the same manner as Exhibit 6 the interest on the advances and undrawn salary of Mr. Otto H. Wagner on Petitioner's Exhibit No. 7 for identification. It is based on the books. These are computations and calculations based on the books.

"Mr. NIEVINSKI: I will offer Petitioner's Exhibit No. 7 in evidence at this time, if your Honor please.

"Mr. ANDERSON: I am not offering any objection, naturally, under the understanding I had in regard to Petitioner's Exhibit No. 6, because they are both alike."

Whereupon Exhibit No. 7 previously identified was admitted in evidence, and is hereby included and will be designated as a part of this statement of evidence.

The books of E. Wagner & Son, Inc., for the calendar year 1929 were kept on the accrual basis. [37]

#### (Cross Examination)

The entry in the books which I have looked at with reference to salary was made by me shortly after Mr. Wagner came to Seattle. The entry was part of the routine of closing the books. I made an entry of \$13,000 salary for each, Mr. E. Wagner and Mr. Otto H. Wagner, for salaries for 1929 from information and directions given me by Mr. Wagner. This was brought out by other details as to machinery bought and contracts and trucks traded

(Testimony of Alfred T. Carne.)

in, the allowance on them, all those things would be gone over personally with me and Mr. Wagner. With reference to interest there is an entry in the books in the sum of \$2750, \$2250 for Mr. Otto H. Wagner and one of \$500. Mr. Otto Wagner said with reference to that, that the officers were entitled to interest on their undrawn salaries. There were two officers, the two Wagners. They owned all the stock. There were no entries in the books that I know of relative to any agreement to pay interest. The amounts of interest shown on the books are the figures given me, and I was told it was based on ten per cent. That was done direct by Mr. Wagner.

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MR. OTTO H. WAGNER,

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

My name is Otto H. Wagner. I reside at Okanogan, Washington, ninety miles north of Wenatchee in the central part of Washington. I was treasurer, secretary and general manager of the petitioner corporation in 1929 and at the present time. The company was first [38] organized in 1924 with principal office at Wenatchee. The plant consisted of a box factory and equipment. There was a small circular saw mill in 1922, but we constructed a box manufacturing factory on Soap Lake Creek in

(Testimony of Otto H. Wagner.)

Okanogan County in 1924. My estimate of the total gross value of the equipment and plant at Okanogan in 1924 is \$15,000 to \$20,000. I heard Mr. Carne read the salaries as shown by the books from 1924 to 1930. Beginning in 1924 the business was principally lumber. The box manufacturing business was fairly new to us at that time, and we had this small saw mill and we undertook to build this box factory and we had a very small operation in 1924 for various reasons, lack of experience, lack of capital and lack of market, and from that period until 1929, 1930, and 1931, we kept each year enlarging the plant and enlarging our markets for the products of that plant.

The capital stock was owned by E. Wagner and Otto H. Wagner, one-half each. We were the only stockholders. We drew small salaries of \$2000 to \$4000 a year from 1924 to 1928, inclusive, because this small saw mill enterprise apparently merited no bank credit and it was practically impossible during those years to go to a banker and borrow money for saw mill purposes, and had we drawn a salary such as the work we did justified, we would have eventually embarrassed our company so it could not have operated. The company had other business operation during 1929 at Wenatchee, Washington. It had interests consisting of real estate holdings.

My father was president of the company during the year 1929. He principally had charge of the



(Testimony of Otto H. Wagner.)

Wenatchee operations, handled our [39] real estate and consulted with myself on account of the financial arrangements for the real estate and also the saw mill operations; and on account of these places of business being separated by at least ninety miles he made frequent trips from Wenatchee to Okanogan and I made frequent trips from Okanogan to Wenatchee to consult with each other as to policy and other matters relative to the operation of our two businesses. In connection with the subdivision that the company had in Wenatchee, he had charge of its residence properties which were unprofitable, and undertook to divide them into tracts, one acre, a half acre, a quarter acre and town lots, down to fifty foot lots. He undertook the proposition of making sales of this property, and after having made sales to undertake to finance the building of houses on the lots in order to assist in the sales. In other words, some were sold as tracts and others as lots with a provision there would be a house thereon. And others he just advertised to sell the property. I would say he supervised fifteen houses altogether in 1929. Subdividing those tracts was the only unusual undertaking regarding the real estate operations at Wenatchee. The most unusual undertaking was in regard to the saw mill operation at Okanogan. We had enlarged our plant by that time, and we could foresee a market for our product at that time, so we undertook a double shift, a day shift and a night shift, on our saw mill and box plant.

(Testimony of Otto H. Wagner.)

We commenced that double shift the first day of June 1929. Each shift consisted of ten hours. We ran the saw mill twenty hours per day. At the saw mill end of the business at Okanogan, I had under my [40] care and supervision during 1929 a normal crew during a single shift operation of 100 men, maybe three or four more or three or four less. The double shift would require 160 men at the saw mill.

I devoted all of my time during 1929 to the business of the corporation. I worked during the double shift from 12 to 20 hours and whatever was necessary to try to make that operation successful. Our prior years were not high pressure operations, and I would say that in prior years I only had to devote about half of my hours to the operation of the saw mill and logging. The company had difficulties in financing its affairs during 1929 and prior years. It was under-financed because bankers seemed to take the attitude that loans to saw mills were a poor risk, and would advance no money whatsoever for capital improvement, but did seek to give us nominal sums for pay rolls. The maximum bank credit for payrolls operation during 1929 was \$15,000. With reference to these loans, I and my father had to personally endorse the company's notes as individuals in order to get the credit and before we could get any money whatsoever during 1929. That same financial condition existed in the years prior to 1929. Even though we

(Testimony of Otto H. Wagner.)

had had adequate financial assistance in those years prior to 1929, there was the matter of marketing and selling this product. 1929 was our first big year of operation.

There was no minute book of the company in evidence for a long time. The only knowledge I had of the minute book was when father lived on the farm near Wenatchee. This is probably 100 miles northwest of Pasco, and due east of Seattle. This book was the [41] entire minute book, all there ever was. There are minutes of the first meeting of the stockholders of E. Wagner & Son of date March 22, 1924. The by-laws of E. Wagner & Son, Inc., comes next. The minutes of the first meeting of the board of trustees are the next entry, also on March 22, 1924. That appears to be all the meetings recorded in that book. W. Oliver Barr was attorney for us. He is now Judge of the Superior Court of Chelan County. He prepared those minutes. Since those original minutes in March 1924, we kept no minutes of the meetings of the stockholders or trustees of this company at any time. The meetings between myself and my father were usually held at the mill in Okanogan County. I and my father acting as trustees for E. Wagner & Son, had a meeting with reference to salaries at the mill office in Okanogan County early in June, possibly the first week in June 1929. By that time we realized that this double shift and this high pressure was a real undertaking, and we were also fairly

(Testimony of Otto H. Wagner.)

certain by that time that the operation would be successful, and we determined at that time that we, as officers, would be entitled to reasonable compensation for the services we were rendering for this company. We took action at that time and decided that a \$10,000 salary would be a reasonable salary for 1929 and following years. My father and I held another meeting along the latter part of September 1929 at Okanogan.

Action was taken with reference to salaries. It was decided that we would each be entitled to a bonus of \$3,000 for our services performed in that year. Father and I were the only trustees.

Petitioner's Exhibit No. 2 for identification bears my signa- [42] ture. Our part time bookkeeper, Mr. A. T. Carne, who was on the stand, prepared that tentative return. Some of the information set forth in it was given to Mr. Carne by mail and other by long distance telephone. I can tell it was filed from the face of the return. It says here received March 15, 1930, Washington, D. C. I have no recollection of filing it except it must have been filed because I have my signature on it. It was probably filed at the Wenatchee office. By referring to the notary's signature I see it was signed at Wenatchee before H. E. Jones, Notary Public. The principal reason it was not possible on March 15th to prepare a complete return for the company for the calendar year 1929, was because Mr. E. Wagner

(Testimony of Otto H. Wagner.)

was not in the county at that time. He had been ordered away in the fall of 1929 on account of his health and did not return until the following June, so we were not prepared to make a return on March 15, 1930. And the second reason was that I myself had gone on a vacation that winter and did not return until possibly the middle of February, 1930, and on account of our bookkeeper residing in Seattle, and a part of our *date* being at the mill office in Okanogan County and the balance of the data at Wenatchee, it was impossible to make a proper return by March 15, 1930.

I heard Mr. Carne testify that his duties as far as our company was concerned, for the years 1929 and 1930 and prior years, consisted of closing the books for the respective years and preparing the income tax returns. I gave Mr. Carne by telephone some of the information on which he returned the tentative return, [43] Petitioner's Exhibit No. 2. In that telephone conversation I told him that the 1929 salaries would be \$10,000 each and a bonus of \$3,000 each. I notice that the tentative return which I hold in my hand, Petitioner's Exhibit No. 2 for identification, has under the heading of deductions, number 12, "Compensation of officers", \$6,000. That is the return which I signed. I probably received it at Okanogan on March 15th. Okanogan is ninety miles from Wenatchee. I went down to Wenatchee to have it notarized and I probably turned it in at

(Testimony of Otto H. Wagner.)

the Wenatchee office on account of the shortage of time. I had no time to check the figures on this return. I had always left that to Mr. Carne and assumed his figures were correct. The reasons I did not check any of the figures on that tentative return were because of lack of time, I knew the return was merely tentative, and in order to gain the extension of time.

Whereupon Petitioner's Exhibit No. 2, previously identified, was admitted in evidence without objection, with the respondent reserving the right to substitute a photostatic copy. Said Exhibit No. 2 is hereby included and will be designated as a part of this statement of evidence.

I hold in my hand the corporation income tax return for 1929, being Petitioner's Exhibit 3 for identification. It bears my signature. It does not bear the signature of my father. The footnote says: "E. Wagner is president, but is out of United States so not available for signature". My father left the United States early in October, 1929. He was ordered away by his doctor on [44] account of a breakdown in his health. He returned to the United States the following June, 1930. That final return for the year 1929 was also prepared by Mr. Carne in Seattle. I don't believe I was present during its actual preparation but the data on here was brought to Seattle by me for Mr. Carne. At

(Testimony of Otto H. Wagner.)

that time I again told him what the salaries were in 1929.

With reference to the matter of the allowance of interest on advances made by myself and my father to the corporation and on undrawn salaries, I don't believe there ever was a meeting of the trustees of the corporation. The matter of interest was first decided on my trip to Seattle to see Mr. Carne for the closing of the books for 1929, probably some time in April, 1930.

My father and I made a practice each year of leaving our salaries as officers in the business so the company could be financed. We would draw only sufficient to actually carry on, to actually live on. The rate of interest the company had to pay on the credit extended to it in that vicinity was ten per cent. The corporation did during that same year obtain money in Seattle at eight per cent. We have been able since then to obtain eight per cent in Seattle. We obtained none for less than eight per cent.

In my opinion a salary of \$13,000 from this corporation would be a reasonable salary for the services performed by me during the year 1929.

Respondent objected to this evidence of the reasonable value of services rendered to the corporation by Otto H. Wagner. The Member overruled the objection and an exception was allowed the respondent. [45]

(Testimony of Otto H. Wagner.)

The allowance of \$13,000 to E. Wagner also would be considered a reasonable compensation for his services for the year 1929. The executive and the administrative employees of the company during the year 1929 were E. Wagner and myself, and we had a bookkeeper at the mill office, who during two months in the summer time had an assistant.

I am included in some respects with other mill operations. From my personal observation in the offices of seven or eight competitors we would usually have at least two for our Wenatchee operations and five at our mill operation in the administrative and executive end of our business. Father and I each took a salary of \$10,000 for 1930 under the same resolution we adopted in 1929. Aside from executive duties which I performed during 1929, I had lots of other duties in regard to the company's affairs. Starting from one end and going to the other, personally I went to cruise timber which was owned by the State of Washington, and make application for the purchase thereof, and see that the timber so purchased was brought out; that is, I took general logging crews and operated the logging operations, laid out the logging work, cutting timber and bringing the timber into the saw mill. Then I had supervision of the saw mill and box factory and lumber yard operations. I handled the entire sales end of the business in Okanogan County besides going to Wenatchee and consulting with



(Testimony of Otto H. Wagner.)

Mr. E. Wagner with reference to his real estate operations there, and the sale of box shooks and lumber at Wenatchee. Comparing the amount of work that I did for the company during the prior [46] years when the business had not been worked up to its full extent, I would say that the job in 1929 was at least double to anything I had ever undertaken before. These salaries that I took prior to 1929 were not adequate salaries. They did not compensate me for the work I did during those years. They were too small. With reference to my father and with reference to the salary which I drew there, his salary was just normal.

Whereupon Petitioner's Exhibit No. 3, previously identified, was admitted in evidence. Respondent was granted permission to withdraw Petitioner's Exhibit No. 3 and substitute a photostatic copy. Said Exhibit No. 3 is hereby included and will be designated as a part of this statement of evidence.

#### Cross Examination.

In 1929 my father was sixty-eight or sixty-nine years old. The state of his health was firm; it was good. He left the country in the early part of October on account of a breakdown in his health. He returned in June, 1930. On direct examination I testified that the same salaries were taken for the year 1930 for both myself and my father. We still drew the same salary. His ship arrived in Vancouver the last part of May, 1930. He was actually

(Testimony of Otto H. Wagner.)

on the ground possibly seven months. Ours being a seasonal operation we cannot determine it by monthly periods. Our business is carried on not to exceed eight months in the year, beginning in April and until we get through in the fall. It lasts generally from April until October to November, which would be our seasonal operation. Father and I owned all the stock of this corporation. We did not declare any dividends or pay dividends during the year 1929. We [47] have never declared or paid any dividends. The reason for the increased salary deduction in 1929 in comparison to 1928 and 1927 and 1926 and 1925 and 1924, was that by the first part of June we could see that our operation that year was going to be a successful one. It was the first year that the corporation made any real money. In other words, we could tell in June that this was the big year. The idea was not that for this reason we would take the profits in view of the fact that we were making a lot of money. The idea was that we would take adequate salaries for what we were doing. Father and I owned all the stock. We controlled the corporation. It was not a matter exactly of convenience for us to take the salaries, it was a matter of justice to ourselves. The basis of the salaries was that we certainly could not continue just to draw a laboring man's salary of \$2000.00. We continued up to these years to draw \$2400 from force of necessity and to protect the

(Testimony of Otto H. Wagner.)

corporation. The corporation owed me personally in 1929 around \$16,000. At the end of 1929 our corporation was indebted to both of us approximately \$40,000 but I believe it owed me slightly more than it did E. Wagner. That amount had been accumulated during 1929 and previous years. That included salaries and what we had been able to put in the corporation personally. The corporation borrowed money in 1929 to the extent of \$15,000. Father and I actually drew out in 1929 just what we needed to live on. I would say in the neighborhood of \$2500 for myself. Relative to the amount I was living on in the years 1924 to 1928, I had other independent income which I could depend on in some years. [48] In 1929 I had income from our ranch at that time, our fruit ranch which I am interested in. I believe there was a small dividend in 1928 but I am not certain as to that.

Relative to the duties of my father, primarily he lived in Wenatchee and his duties there were to transform his unprofitable orchard property into salable town lots and tracts and building thereon houses and cabins in order to make these tracts available and salable. His duties at Wenatchee were to sell box shooks and lumber such as that manufactured at our Okanogan plant, and he would receive lumber at Wenatchee from our plant and purchase it from other local lumber yards for the produc-

(Testimony of Otto H. Wagner.)  
tion of these houses and painting, which was called for in their agreement or contract. Besides that he would make frequent trips to the office at Okanogan to confer with me as to the logging policy and saw mill operations and sales of our products, and also consult with me as to what he was doing at the Wenatchee real estate end of the business. I do not recall making any written record or memorandum or notation of the meeting which I had with my father early in June, 1929, with reference to salaries. Its arrangement was just like the transaction of other business, we would talk matters over and come to conclusions. The subject of interest never came up during our discussions, that is, between E. Wagner and myself. There was no agreement of the corporation to pay interest.

#### Redirect Examination.

With reference to the inquiry as to whether any dividends were paid, there was an unusual happening relative to the company. [49] In August, 1931, we lost our entire plant in a fire. The lumber was partially insured but there was no insurance on the plant or equipment.

We paid our superintendent \$3600 in 1929. I believe there was also a \$600 bonus at the end of the year, besides a contract to get an interest in the mill property as a bonus. \$3600.00 salary, \$600.00 bonus and approximately \$3000.00 on his contract.

(Testimony of Otto H. Wagner.)

that would total about \$7200.00. With reference to the time he put in for the company during 1929 as compared with the amount of time I gave the company during that time, he was merely superintendent and his time was just from shift to shift. In other words, he only worked one shift. I was general manager and was in for both shifts. To compare the time that I as general manager put in during this time and the time my father put in, I would say that the time the superintendent put in would compare about half of what we were putting in. Comparing the responsibility of the superintendent compared with our responsibility for the year 1929, the responsibility of the superintendent amounted to taking charge of the actual saw mill operation and seeing that the box factory made proper boxes. He was a box maker primarily and that was his job, seeing they were properly manufactured so they could be sold. All the time he put in was approximately one shift, and for that he received approximately \$7000.

Aside from the beginning record in the minute book in March, 1924, which minutes our attorney drew, we did not record any meetings at all. [50]

## MR. E. WAGNER,

called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

## Direct Examination.

My name is E. Wagner. I reside at Wenatchee, Washington. I was seventy-four last February. I am the president of E. Wagner & Son, Inc., and was in 1929. I organized this corporation in 1924. I turned over to the corporation when it was organized in 1924 all of the property I owned. In 1924 the saw mill consisted of a small circular saw mill and a kind of a home made box factory. It was roughly worth about \$20,000. We built the saw mill up by improving it every season. I and my son advanced to the company from time to time every cent we could scrape up. The salaries which we did not draw were left with the company and went in to improving the mill. The reason that I and my son drew such small salaries for the years 1924 to 1928, inclusive, was that if we had drawn any more it would have busted the company, and it couldn't exist at all. Relative to the character of the operation in 1929 as compared with the prior years, the value of business and kind of business, I will say that we had improved the mill to such an extent and the business had grown as we had yearly improved, so that we had to put on a double shift the first week in June, 1929. That was the first year we had a double shift in that mill. Those shifts were ten hour shifts and during the four hours be-

(Testimony of Mr. E. Wagner.)

tween the two shifts we repaired machinery, kept the mill up and made repairs that could not be made while the mill was running.

I had charge of this subdivision which my son spoke of down [51] at Wenatchee. In general, my work in connection with that subdivision in 1929 consisted of this: I hired surveyors to lay out the lots and map out acre tracts, half acre tracts, quarter acre tracts and fifty foot lots, and in order to sell those lots I had to build houses. Those people I sold to didn't have the money to build their own houses, so I would make the plans and the specifications according to the means of the prospective purchaser as to what I would build for them, and make up a contract. I had all the way from twenty to thirty men under me in 1929 down in the Wenatchee end of the business. We had at the saw mill end of the business about 150 to 160 men. Besides the work which I did on this subdivision in Wenatchee in 1929, I did work in connection with the mill property, the saw mill itself. I would drive out whenever there was an opportunity to help scout the timber and see where we would buy, and get the cutters started and see they didn't cut over the line, because we would have to pay a heavy fine; if we cut over the line, that is, if we cut over the line we would be accused by the State of taking timber that did not belong to us, and a heavy fine attached. The other work was, I used to run up once a week or sometimes twice a week, go up in the forenoon

(Testimony of Mr. E. Wagner.)

and come back in the afternoon. That is where I ruined my health. I devoted all of my time to our company's business during 1929. Speaking of the Wenatchee office, in the day time I would be out stepping off the lots and stepping off and showing them where the places were, and after dark I would make plans and figure the lumber bill to try and figure out what [52] I could build a house for which would cost \$2,000 or \$3,000 or maybe only \$900. I would do that after dark, by lamp light, and in the day time it took all my time to sell the lots to the customers, prospective customers, where the property is. I recall the work which our superintendent had during 1929. He put in some more time than I put in during 1929. About \$15,000 was the maximum credit that our company had. I and my son had to personally endorse all loans that the bank made to the company.

I and my son in 1929 had meetings with reference to our salaries for the years 1929 and subsequent years. A meeting was held about the first week in June, 1929, at Okanogan. We voted for a \$10,000 salary apiece for 1929 and subsequent years. Another meeting was held about the first of September, 1929. We voted a \$3,000 bonus apiece.

Along in July, 1929, I began to break down. I lost my eyesight in the fall of 1929. The breakdown was caused from driving to Wenatchee over to Okanogan, and where I lost the eye was a Ford coming on at night one evening and blinded me



(Testimony of Mr. E. Wagner.)

with the flare up and I had to stop right there. The cause of my general breakdown was overwork, trying to make things go.

The rate of interest the company was paying on its loans that were made to it during 1929 was ten per cent.

I was acquainted during 1929 with other mill operations in the vicinity, and I had occasion to observe the administrative and executive ends of the business of other mills. The number of officers and employees in the administrative and executive end of [53] those businesses were more than double what we kept. With reference to my income and earnings prior to 1924, I earned from \$40,000 to \$100,000 in a few months from 1906 to 1918. In the period of a year my earnings would be approximately \$40,000, \$50,000 and \$60,000. I first went into the saw mill business in 1888 in Castle Rock, Washington. With reference to a reasonable salary for 1929, the salary of \$10,000 and bonus of \$3,000 allowed to me for the work which I did in 1929 was underpay. I was capable of earning more than that in other lines of work. I have earned from \$40,000 to \$100,000 in seven months.

#### Cross Examination

I earned between \$40,000 and \$50,000 a year in prior years, from 1906 until 1917. I guess I was twenty years younger. I could not have gone out in the year 1929 and made \$40,000 or \$50,000. It was decided to pay \$10,000 or to take a salary of \$10,000 in 1929 because the work was worth it. The

(Testimony of Mr. E. Wagner.)

corporation paid me \$10,000 in cash and credit in 1929. I couldn't say how much cash. I didn't hear my son testify how much he drew. I was too far away from him. If I had been closer I might have heard it.

I was familiar with the condition of the corporation during 1929. It could have paid \$10,000 in 1929. It did pay me by check. When the final payments were to be made, I had left the country. My doctor ordered me for a voyage and I was ill. I broke down completely and I left October 1st and the payment was not made before I left. I drew enough to get my steamship ticket, approxi- [54] mately \$5,000. When I came back the first week in June, 1930, I drew some more. I drew a thousand dollars at a time. I did not draw all my money out in 1929 because in the spring is our heaviest pay rolls, and we need money, because the biggest business comes in after the apples are sold along in November and December, and so on, but in the spring when we put 150 men or 160 men, or sometimes 125 men to work it varies, and it takes cash twice a month, and we borrow money. The corporation was in a financial position to pay me my money in 1929 and 1930 but we needed the money in the business, to pay 150 laborers, and our bank credits would only allow us \$15,000 for the year's operation, and it would be a case then of not running because we have got to have the cash in the business to pay the men. When I left for New Zealand in the first week of October, there was only enough money there to meet the monthly

(Testimony of Mr. E. Wagner.)

pay roll of the mill workers. I drew \$5,000 to get my steamship ticket in September of 1929. When I left the corporation owed me the balance of the \$10,000. With reference to any agreement that the corporation was to pay me and my son interest on money that belonged to me and my son and had left with the company, we figured we were entitled to interest because we were paying interest to the banks that we borrowed money from. Relative to an agreement or understanding, I suppose you understand how a father and son will talk it over.

#### Redirect Examination

I returned from the trip the first week in June, 1930. When we borrowed money from the bank we had to pay ten per cent interest [55] and they took it off before they gave us our check. The interest is taken off right then and not at the end of ninety days. They take off the interest beforehand. We get a credit of \$9,000 and some odd dollars. The interest was taken off beforehand so that it amounts to more than ten per cent.

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#### MR. OTTO H. WAGNER,

recalled as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

#### Redirect Examination

The reasons why the salaries were not withdrawn for the year 1929 were that in the winter of 1928 and spring of 1929 we purchased lots of new equip-

(Testimony of Otto H. Wagner.)

ment in order to carry out the policy of enlarging our mill plant, and in order to purchase that equipment the bank would not advance one cent for capital investment, which that was, so in order to purchase this equipment at all, we would get it for a few dollars down on a contract and sign notes on the contract to pay out the balance. The only means we had of paying out these contracts for equipment would be from the company's earnings and from the officers' loans. We could not make such loans from any outside source.

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The respondent called no witnesses in rebuttal.

Thereupon counsel for both petitioner and respondent stated that they had no further or other evidence to present, and rested their case.

The foregoing is the substance of all the material evidence [56] adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, General Counsel for Respondent, as attorney for the Commissioner of Internal Revenue.

HERMAN OLIPHANT

General Counsel

Counsel for Respondent

The foregoing is the substance of all the material evidence adduced at the hearing before the Board

of Tax Appeals, and the same is approved by the undersigned as attorneys for the petitioner.

A. G. ELDER

CYRIL D. HILL

Attorneys for Petitioner.

Approved and ordered filed this 1st day of Dec., 1936.

(Signed) J. E. MURDOCK

Member

[Endorsed]: Lodged Nov. 30, 1936. Filed Dec. 1, 1936. [57]

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Admitted in Evidence Sept. 11, 1934.

PETITIONER'S EXHIBIT 1.

TREASURY DEPARTMENT

Washington

March 12, 1932.

E. Wagner and Son,  
Wenatchee, Washington.

Sirs:

You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of \$2,670.61, tax and penalty, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing

of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,  
DAVID BURNET,  
Commissioner,  
By (signed) J. C. WILMER,  
Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870. [58]

## STATEMENT.

IT:E:Aj

PWH-19624-60D

In re: E. Wagner and Son,  
Wenatchee, Washington.

Year—1929.

Tax Liability—\$3,607.15.

Tax Assessed—\$1,063.71.

Deficiency—\$2,543.44.

5% Penalty—\$127.17.

Total deficiency—\$2,670.61.

The report of the internal revenue agent in charge, Seattle, Washington, based upon an investigation of your income tax liability for the year 1929, has been reviewed and accepted as submitted. The method of determining your income tax liability and penalty follows:

Net income as shown by return		\$12,670.05
Plus:		
1. Miscellaneous expense disallowed		80.30
2. Sawmill operating expense disallowed		915.55
3. Officers salaries disallowed		20,000.00
4. Interest disallowed		2,750.00
5. Property taxes, year 1928		1,026.43
		<hr/>
Total		\$37,442.33
Less:		
6. Property taxes, year 1929	\$1,320.52	
7. Loss on boiler	275.00	
8. Depreciation understated	3,054.57	4,650.09
	<hr/>	<hr/>
Net income as adjusted		\$32,792.24

## Explanation of Changes

1. Small tools, sawmill, deducted as an expense have been disallowed and restored to plant assets.

2. The correct residual value of discarded equipment charged to sawmill operating expense is \$1,083.31, instead of \$1,998.86 as shown by the books. [59]

3. Officers salaries in the amount of \$20,000.00 have been disallowed since they were not paid or incurred within the taxable year.

4. Interest in the amount of \$2,750.00 has been disallowed since it did not accrue within the taxable year.

5. This represents an adjustment of accrued taxes in conformity with General Counsel Memorandum 6667, VIII-35, 4324.

6. See item 5.

7. The loss on boiler is \$275.00 for the reason that the residual value was \$275.00 when discarded.

8. Depreciation has been allowed in the amount of \$17,924.05, whereas only \$14,869.48 was claimed on the return.



Form 1120  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
(Auditor's Stamp)

# CORPORATION INCOME TAX RETURN

## For Calendar Year 1929

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1930

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

*E. H. Warner Son*  
(Name)

(Street and number)

*Henrikette, Wash*  
(Post office and State)

Date of Incorporation

Under the Laws of what State or Country

*Washington, D.C.*

File Code

Serial Number

(Auditor's Stamp)

Cash, Checks, M. O., Cert. of Ind. First Payment

Carded

As

Is This a Consolidated Return of Type or More Corporations? *1*

GROSS INCOME  
Gross Sales from Trading or Manufacturing, Less Returns and Allowances \$ *172,680.71*

Less Cost of Goods Sold:

(a) Inventory at beginning of year	\$	<i>17,050.09</i>
(b) Merchandise bought for sale		<i>1,773.28</i>
(c) Cost of manufacturing or producing goods (From Schedule A)		<i>189,260.55</i>
(d) Total of lines (a), (b), and (c)	\$	<i>182,883.22</i>
(e) Less inventory at end of year		<i>29,240.00</i>

Gross Profit from Trading or Manufacturing (Item 1 minus Item 2) \$ *155,737.43*

Gross Profit from Operations Other Than Trading or Manufacturing. (State nature of income):

(a) <i>Share &amp; Book Sales</i>		<i>2,721.53</i>
(b)		
(c)		

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds

Royalties

Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)

Dividends on Stock of Domestic Corporations

Other Income (Including dividends received on stock of foreign corporations). (State nature of income):

(a)		
(b)		
(c)		

TOTAL INCOME IN ITEMS 3 TO 10 \$ *20,664.41*

### DEDUCTIONS

Compensation of Officers (From Schedules C) \$ *6,000.00*

Interest on Business Property

Repairs (From Schedule D) *679.77*

Interest

Taxes (From Schedule E)

Losses (From Schedule F)

Bad Debts (From Schedule G)

Dividends (From Schedule H)

Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I) *11,150.00*

Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submitt schedule, see Instruction 2)

Other Deductions Not Reported Above. (Explain below, or on separate sheet):

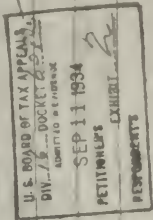
(a) Salaries and wages. (Not included in Items 5, 13, or 14 above)		
(b) Net Loss for prior year. (Submitt schedule)		
(c)		
(d)		
(e)		
(f)		

TOTAL DEDUCTIONS IN ITEMS 12 TO 22 \$ *17,829.77*

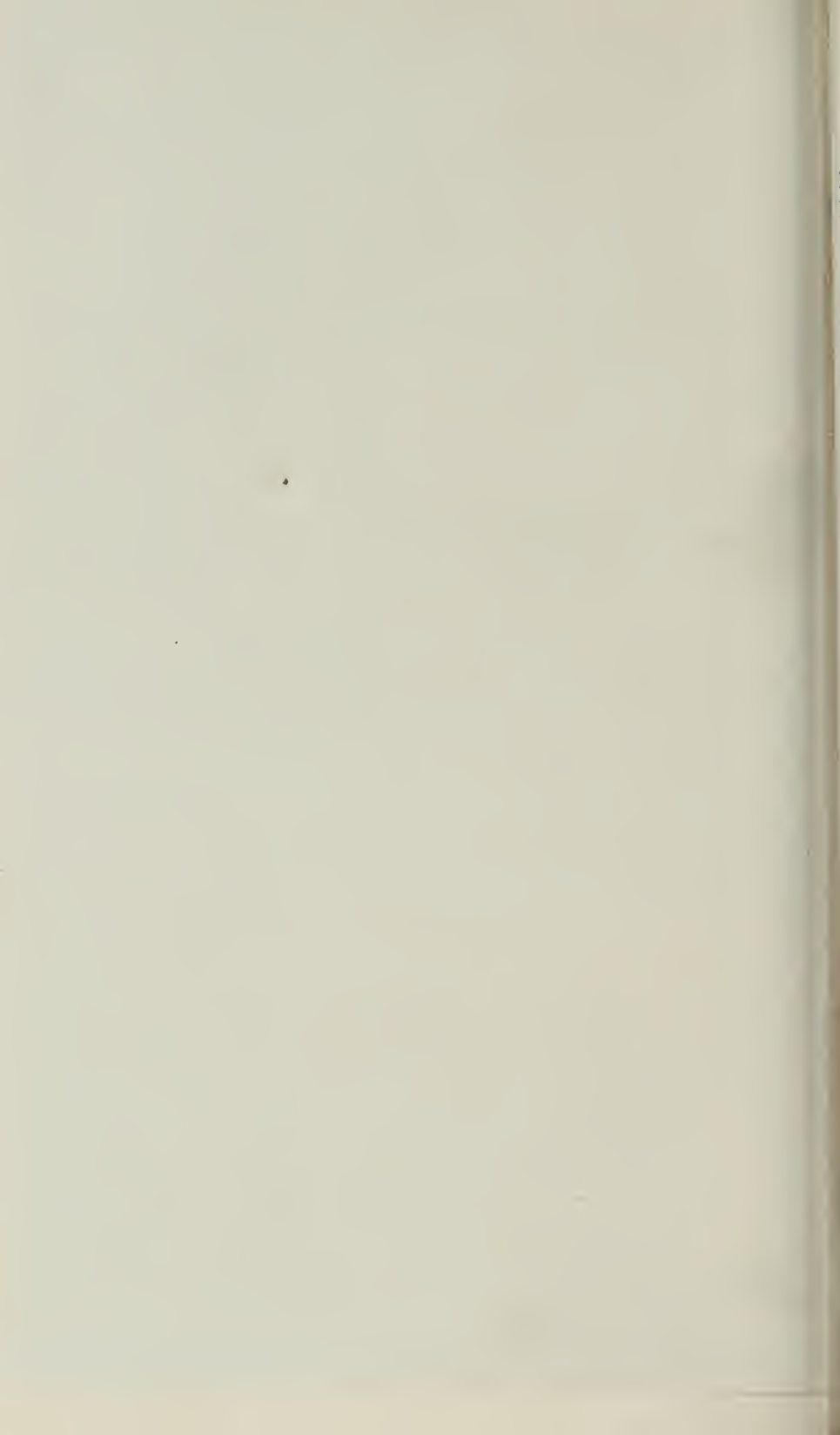
NET INCOME (Item 11 minus Item 23) \$ *2,834.64*

### COMPUTATION OF TAX

Net Income (Item 24 above)	\$	<i>2,834.64</i>	28. Income Tax (12% of Item 27)		
Less Credit of \$3,000 (for a domestic corporation having a net income of less than \$25,360)		<i>3,000.00</i>	29. If net income of domestic corporation is less than \$25,360, enter the amount over \$25,000		<i>No</i>
Balance (Item 25 minus Item 26)	\$	<i>0.00</i>	30. Total Tax (Item 28 plus Item 29)		<i>TAX PAYABLE</i>
Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)					
Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)					
Balance of Tax (Item 30 minus Items 31 and 32)					



RECEIVED  
3/15



## Computation of Tax

Net income as adjusted	\$32,792.24
Less:	
Credit	None
Balance subject to tax	\$32,792.24
Income tax at 11%	\$ 3,607.15
Total tax assessable	\$ 3,607.15
Tax previously assessed	1,063.71
Deficiency in tax	\$ 2,543.44
Plus:	
5% penalty for negligence asserted under the provisions of section 293(a) of the Revenue Act of 1928	127.17
Total	\$ 2,670.61
	[60]

The understatement of tax for the year 1929 is attributable to negligence as defined in the regulations and under the provisions of section 293(a) of the Revenue Act of 1928, and a penalty of 5% of the deficiency attaches. The 5% penalty is included in the above assessment and the interest, due in accordance with the law, will be computed by this office and demanded by the collector at the time you are called upon to pay the tax.

Payment should not be made until a bill is received from the collector of internal revenue for your district, and remittance should then be made to him. [61]

## Page 2 of Return SCHEDULE K—BALANCE SHEETS (See Instruction 43)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 5,814.68		\$ 12,852.50
2. Notes receivable		31,844.73		31,844.73
3. Accounts receivable	\$	3,512.41	\$	8,638.40
Less reserve for bad debts				
4. Inventories:				
Raw materials—Stumpage	\$	3,500.00	\$	7,779.33
Work in process—Logs on Hand		7,210.49		4,200.00
Finished goods—Lumber on Hand		9,840.00		25,140.00
Supplies—Lumber at Wenatchee		1,884.15		1,884.15
		22,434.64		39,003.48
5. Investments (nontaxable):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	\$		\$	
Securities issued under the Federal Farm Loan Act, or under such Act as amended				
Obligations of the United States or its possessions				

SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
6. Other investments:				
Stocks of domestic corporations.....	\$ .....		\$ .....	
Bonds of domestic corporations.....	.....		.....	
Stocks and bonds of foreign corporations.....	.....		.....	
All other investments or loans.....	.....		.....	
7. Deferred charges:				
Prepaid insurance .....	\$ .....		\$ .....	
Prepaid taxes .....	.....		.....	
All other .....	.....		.....	
8. Capital assets:				
Land .....		34,498.17		34,498.17
Buildings .....	\$ 22,707.13		\$ 22,707.13	
Machinery and equipment.....	87,217.15		87,217.15	
Furniture and fixtures.....	596.50		596.50	
Delivery equipment .....	.....		.....	
.....	.....		.....	
.....	.....		.....	
	<u>\$110,520.78</u>	<u>73,105.16</u>	<u>\$110,520.78</u>	<u>61,955.66</u>
Less reserves for depreciation.....	<u>37,415.62</u>		<u>48,565.62</u>	

## SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
9. Patents .....				
10. Good will .....				
11. Other assets (describe fully):				
.....	\$		\$	
.....				
.....				
12. Total Assets .....		\$171,209.79		\$188,792.44
LIABILITIES				
13. Notes payable (less than one year) .....		\$ 450.00		\$ 450.00
14. Accounts payable .....		5,904.67		20,652.68
15. Bonds and notes (not secured by mortgage) .....				
16. Mortgages (including bonds and notes so secured) .....				
17. Accrued expenses:				
Payroll .....	\$		\$	
Taxes .....	3,004.68		3,004.68	
		925.00		925.00

SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount	Total
All other .....	925.34	925.34	4,855.02
18. Other liabilities (describe fully): Deposits.....	470.00	470.00	
Stock subscriptions .....	7,985.62	7,985.62	
Contracts payable .....	8,187.22	8,187.22	
Mortgages payable .....	4,500.00	4,500.00	
Loans from officers.....	11,852.81	11,852.81	32,995.65
Reserve for tracts sold.....			21,900.00
19. Capital stock:			
Preferred stock (less stock in treasury).....	\$ .....	\$ .....	99,000.00
Common stock (less stock in treasury).....	99,000.00		99,000.00
20. Surplus .....	\$ 3,803.16	\$ 6,104.45	
21. Undivided profits .....	2,301.29	2,834.64	8,939.09
22. Total Liabilities .....			\$171,209.79
Remarks .....			\$188,792.44

TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
Tacoma, Washington

Feb. 24, 1930

E. Wagner & Son, Inc.,  
Okanogan,  
Wash.

An extension of 60 days is hereby granted within which to file your 1929 income tax return.

This extension is expressly conditioned upon compliance with the following instructions:

1. The filing on or before March 15, 1930, of a tentative return accompanied by a remittance covering one-fourth of the estimated tax due thereon.

2. One copy of this extension must be attached to the tentative return and one copy must be attached to the complete return.

3. If the complete return shows a greater tax to be due than the estimated tax set forth on the tentative return, and one-fourth of the correct tax was not paid on or before March 15th, then interest on the deficiency in the first installment of the correct tax according to the complete return must be paid, which interest is at the rate of 6% per annum and dates from March 15, 1930, up to the date of the expiration of this extension, or to the date of the payments of such deficiency, whichever is earlier.

This extension does not apply to annual information returns, Forms 1096 and 1099, and such returns



must be filed with the Collector on or before February 15, 1930, or they will be delinquent.

Respectfully,

ROBERT H. LUCAS,

Commissioner

By BURNS POE,

Burns Poe, Collector

EMB:EM [64]

SCHEDULE L—RECONCILIATION OF NET  
INCOME AND ANALYSIS OF CHANGES  
IN SURPLUS

[Not filled in.]

QUESTIONS

KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

A.—Agriculture and related industries, including fishing, logging, ice harvesting, etc., and also the leasing of such property. State the product or products. B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. State the product or products. C.—Manufacturing. State the product and also the material if not implied by the name of the product. D.—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufac-

ture. State nature of structures built, materials used, or kind of installations. E1.—Transportation—rail, water, local, etc. State the kind and special product transported, if any. E2.—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephone; waterworks or power. E3.—Storage—without trading or profit from sales—(elevators, warehouses, stockyards, etc.). State product stored. E4.—Leasing transportation or utilities. State kind of property. F.—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. Sales with storage with profit primarily from sales. G.—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical service. State the service. H.—Finance, including banking, real estate, insurance. I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons.

2. Concerns whose business involves activity falling in two or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or

install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E1 or E2 may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answers:

(a) General class (use key letter designation)

.....

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation).....

.....

AFFILIATIONS WITH OTHER CORPORATIONS

See Instruction 38

4. Is this a consolidated return of two or more corporations? ..... If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Article 12 (c) and (d), Regulations 75.

5. Did the corporation file a consolidated return for the preceding taxable year? .....

## PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? .....  
 Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? ..... If answer is "yes," give name and address of each predecessor business, and the date of the change in entity. ....  
 .....  
 .....

Upon such change were any asset values increased or decreased? ..... If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

## BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? ..... If not describe, fully what other basis or method was used in computing net income. Accrual.

## VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock.  
 Cost.

LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

.....  
.....

The corporation's books are in case of.....

Located at .....

## Page 4 of Return

## SCHEDULE A—COST OF MANUFACTURING OR PRODUCING GOODS (See Instruction 2)

Items	Amount
Salaries and wages.....	\$116,276.60
Material and supplies.....	2,856.94
Expenses .....	29,661.81
	148,795.35

## SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

(Not Filled In)

## SCHEDULE C—COMPENSATION OF OFFICERS

(See Instruction 12)

1. Name of Officer	2. Official Title	3. Time Devoted to Business	4. Common	5. Preferred	6. Amount of Compensation (Enter as Item 12)
E. Wagner	Pres.-Treas.	All	50%	.....	\$3,000.00
O. H. Wagner	V. P. Secy.	All	50%	.....	3,000.00

## SCHEDULE D—COST OF REPAIRS (See Instruction 14)

(Not Filled In)

## SCHEDULE E—TAXES PAID (See Instruction 16)

(Not Filled In)

## SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 17)

(Not Filled In)

## SCHEDULE G—BAD DEBTS (See Instruction 18)

(Not Filled In)

## SCHEDULE H—DIVIDENDS DEDUCTIBLE

(See Instruction 19)

(Not Filled In)

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Ac- quirement	5. Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of Land)	Amount of Depreciation Charged Off 6. Previous years 7. This year
Mill Buildings—Lumber.....	1924-5	New	10 Years	\$22,703.13	\$ .....
Machy. and Equipment.....	1924-8	New and Used	“	87,217.15	37,415.62
Office Furn. and Eqpt.....	“	“	“	596.50	.....

AFFIDAVIT.

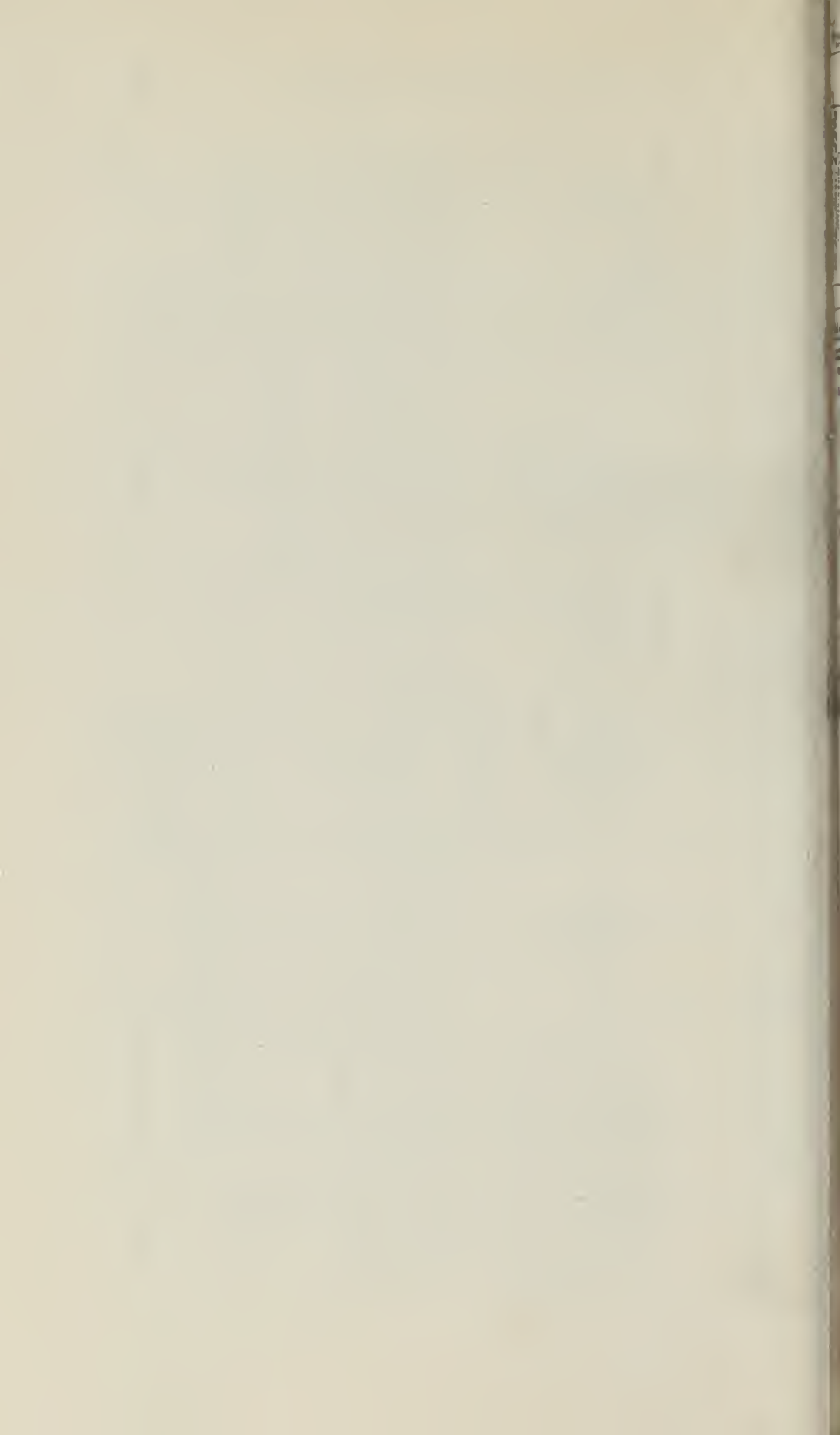
We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

.....  
 (Corporate Seal) President.  
 OTTO H. WAGNER Treasurer.

Sworn to and subscribed before me this 15 day of March, 1930.  
 W. E. JONES, Notary Public.

(Notarial Seal)

Attach a separate sheet if any of the above schedules do not provide sufficient space.





**CORPORATION INCOME TAX RETURN**  
**For Calendar Year 1930**

Page 1 of Return  
 File No. **753**  
 Serial **440017**  
 DISTRICT OF COLUMBIA  
**MAY 10 1930**  
 TAX \$ **1063.57**  
 PAID **268.57**  
 DIST. - MARYLAND  
**MAY 10 1930**  
 U.S. BUREAU OF INTERNAL REVENUE  
 Wash. D.C.

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1931

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

*E. Wagner Son*  
 (Name)

*Wenatchee, Wash*  
 (Post office and State)

Date of Incorporation

*April 1, 1924*

Under the Laws of what State or Country

*Washington*

DOCKET 6-2244  
 TITLE AND NUMBER  
**SEP 11 1934**  
 PETITIONER'S EXHIBIT - 3

INTERNAL REVENUE AGENCY RECEIVED  
**JUN 1 1931**  
 SEATTLE DIVISION

Kind of Business *Saw Mill Operations* Is This a Consolidated Return of Two or More Corporations? *No*

**GROSS INCOME**

1. Gross Sales from Trading or Manufacturing, Less Returns and Allowances		229,141.69
2. Less Cost of Goods Sold:		
(a) Inventory at beginning of year	\$ 17,250.49	
(b) Merchandise bought for sale	1,723.28	
(c) Cost of manufacturing or producing goods (From Schedule A)	156,418.21	
(d) Total of lines (a), (b), and (c)	175,392.08	
(e) Less inventory at end of year	27,119.33	138,122.65
3. Gross Profit from Trading or Manufacturing (Less Losses from 2)	2,543.46	71,019.04
4. Gross Profit from Operations Other Than Trading or Manufacturing	127.17	
(a) <i>House on Park Avenue</i>		1,276.64
(b) <i>Tranche Operations</i>		471.51
(c) <i>Miscellaneous</i>		790.90
5. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		
6. Rents		
7. Royalties		
8. Credit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)		984.33
9. Dividends on Stock of Domestic Corporations		
10. Other Income (Including dividends received on stock of foreign corporations). (State nature of income.)		
(a)		
(b)		
(c)		
<b>11. TOTAL INCOME IN ITEMS 3 TO 10</b>		<b>76,642.42</b>

**DEDUCTIONS**

1. Compensation of Officers (From Schedule C)		20,000.00
2. Rent on Business Property		
3. Repairs (From Schedule D)		11,956.26
4. Interest		4,759.33
5. Taxes (From Schedule E)		1,026.42
6. Losses (From Schedule F)		
7. Bad Debts (From Schedule G)		
8. Dividends (From Schedule H)		
9. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (Schedule I)		14,869.48
10. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instructions 21)		
11. Other Deductions Not Reported Above. (Explain below, or on separate sheet):		
(a) Salaries and wages. (Not included in item 2, 12, or 14 above)		
(b) Net Loss for prior year. (Submit schedule)		
(c) <i>Office Expenses</i>		2,222.17
(d) <i>Traveling Expenses</i>		1,137.11
(e)		
(f)		
<b>12. TOTAL DEDUCTIONS IN ITEMS 12 TO 22</b>		<b>61,972.37</b>
<b>13. NET INCOME (Item 11 minus Item 23)</b>		<b>12,670.05</b>

**COMPUTATION OF TAX**

14. Net Income (Item 24 above)	\$ 12,670.05	25. Income Tax (12% of Item 27)	\$ 1,063.71
15. Less Credit of \$3,000 (for a domestic corporation having a net income of less than \$25,000)	3,000.00	26. If net income of domestic corporation is less than \$25,000, enter the amount over \$25,000	
16. Balance (Item 25 minus Item 26)	9,670.05	27. Total Tax (Item 25 plus Item 26)	1,063.71
17. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)		28. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)	710.24
18. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)		29. Balance of Tax (Item 27 minus Items 31 and 32)	1,063.71
19. Balance of Tax (Item 27 minus Items 31 and 32)			

GRANTED  
 SEPT 1 1934  
 RECEIVED  
 U.S. BUREAU OF INTERNAL REVENUE

PRESENTED WITH RECEIPT FROM OFFICE OF DISTRICT CLERK OF DISTRICT OF COLUMBIA  
**MAY 20 1930**  
 RECEIVED  
 FACOM DEPTOR



Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS</b>				
1. Cash .....		\$ 5,814.68		\$ 12,852.50
2. Notes receivable .....		31,844.73		8,108.92
3. Accounts receivable .....		3,512.41		8,089.14
Contracts receivable .....				36,391.01
Less reserve for bad debts.....				
4. Inventories:				
Raw materials—Stumpage .....	\$ 3,500.00		\$ 7,779.33	
Work in process—Logs on Hand.....	7,210.49		4,200.00	
Finished goods—Lumber on Hand.....	9,840.00		25,140.00	
Supplies—Lumber at Wenatchee.....	1,884.15			
.....				
.....		22,434.64		37,119.33
5. Investments (nontaxable):				
Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia .....				\$ .....
Securities issued under the Federal Farm Loan act, or under such Act as amended.....				.....

## SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
Obligations of the United States of its pos- sessions .....				
6. Other investments:				
Stocks of domestic corporations.....	\$ .....		\$ .....	
Bonds of domestic corporations.....	.....		.....	
Stocks and bonds of foreign corporations.....	.....		.....	
All other investments or loans.....	.....		.....	
7. Deferred charges:				
Prepaid insurance .....	\$ .....		\$ .....	
Prepaid taxes .....	.....		.....	
All other .....	.....		.....	
8. Capital assets:				
Land .....		34,498.17		34,283.66
Buildings .....	22,707.13		30,322.72	
Machinery and equipment.....	88,217.15		114,286.33	
Furniture and fixtures.....	596.50		763.95	
Delivery equipment .....	.....		.....	
.....	.....		.....	
.....	.....		.....	
.....	\$110,520.78		\$145,373.00	

SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year Amount	Total	End of Taxable Year Amount	Total
Less reserves for depreciation.....	37,415.62	73,105.16	50,659.52	94,713.48
9. Patents .....				
10. Good will .....				
11. Other assets (describe fully):..... \$			\$	
.....				
.....				
.....				
.....				
12. Total Assets .....		\$171,209.79		\$231,558.04
LIABILITIES				
13. Notes payable (less than one year).....		\$ 450.00		\$ 3,604.74
14. Accounts payable .....		5,904.67		2,747.07
15. Bonds and notes (not secured by mortgage).....		11,852.81		50,706.45
16. Mortgages (including bonds and notes so secured) .....		4,500.00		3,500.00

## SCHEDULE K—BALANCE SHEETS—Continued

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
17. Accrued expenses:				
Interest .....	\$ 630.00		\$ 630.00	
Taxes .....	925.00		925.00	
All other .....	3,300.02	4,855.02	1,703.17	3,258.17
18. Other liabilities (describe fully):				
Deposits on tracts.....	470.00			
Contracts payable .....	8,187.22		8,032.11	
Stock subscriptions .....	7,985.62	16,642.84	8,750.00	16,782.11
Reserve for tracts sold.....		21,900.00		33,185.00
19. Capital stock .....				
Preferred stock (less stock in treasury).....	\$		\$	
Common stock (less stock in treasury).....		99,000.00		99,000.00
20. Surplus .....	\$ 3,803.16		\$ 6,104.45	
21. Undivided profits .....	2,301.29	6,104.45	12,670.05	18,774.50
22. Total Liabilities .....		\$171,209.79		\$231,558.04
Remarks .....				

## Page 3 of Return

SCHEDULE L—RECONCILIATION OF NET INCOME AND  
ANALYSIS OF CHANGES IN SURPLUS.

(Not Filled In)

## QUESTIONS.

## KIND OF BUSINESS.

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

A.—Agriculture and related industries, including fishing, logging, ice harvesting, etc., and also the leasing of such property. State the product or products. B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. State the product or products. C.—Manufacturing. State the product and also the material if not implied by the name of the product. D.—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufacture. State nature of structures built, materials used, or kind of installations. E1.—Transportation—rail, water, local, etc. State the kind and special product transported, if any. E2.—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephone; waterworks or power. E3.—

Storage—without trading or profit from sales—(elevators, warehouses, stockyards, etc.) State product stored. E4.—Leasing transportation or utilities. State kind of property. F.—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. Sales with storage with profit primarily from sales. G.—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical services. State the service. H.—Finance, including banking, real estate, insurance. I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons.

2. Concerns whose business involves activity falling in two or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E1 or E2 may own or control the source of their material or power; con-



cerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answers:

(a) General class (use key letter designation)

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation)

AFFILIATIONS WITH OTHER CORPORATIONS.

See Instruction 38.

4. Is this a consolidated return of two or more corporations? If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Article 12 (c) and (d), Regulations 75.

5. Did the corporation file a consolidated return for the preceding taxable year?

PREDECESSOR BUSINESS.

6. Did the corporation file a return under the same name for the preceding taxable year?

Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? ..... If answer is "yes," give name and address of each predecessor business, and the date of the change in entity. ....

.....

.....

Upon such change were any asset values increased or decreased? .....

If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

#### BASIS OF RETURN.

7. Is this return made on the basis of actual receipts and disbursements? .....

If not, describe fully what other basis or method was used in computing net income. Accrual.

#### VALUATION OF INVENTORIES.

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock. Cost or Market, whichever is lower.

#### LIST OF ATTACHED SCHEDULES.

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the cor-

poration should be placed on each separate schedule accompanying the return.

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

The corporation's books are in care of.....

Located at ..... [69]

Page 4 of Return SCHEDULE A—COST OF MANUFACTURING OR PRODUCING GOODS

Items	Amount	Items	Amount (Enter as Item 2c)
Salaries and wages.....	\$108,725.18		\$
Material and supplies.....	43,221.28		
Misc. Expenses .....	4,471.75		
	<u>\$156,418.21</u>		

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.  
(See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost or Value as of March 1, 1913, Whichever Greater	6. Subsequent Improvements	7. Net Profit (Enter as Item 8)
Okanogan Ave. Lots .....	4/1/24	\$1,325.00	\$	\$ 340.67		\$ 984.33

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 12)

1. Name of Officer	2. Official Title	3. Time Devoted to Business		4. Common		5. Preferred	6. Amount of Compensation (Enter as Item 12)
		All	50%	4. Common	5. Preferred		
E. Wagner.....	Pres.-Treas.	All	50%				\$13,000.00
O. H. Wagner.....	V. P. Secy.	All	50%				13,000.00

SCHEDULE D—COST OF REPAIRS  
(See Instruction 14)

SCHEDULE E—TAXES PAID  
(See Instruction 16)

1. Items	2. Amount (Enter as Item 14)	1. Items	2. Amount (Enter as Item 16)
Salaries and wages .....	\$ 5,530.09	Taxes, Mill .....	\$ 441.74
Parts, etc. ....	6,426.17	Taxes, Wenatchee .....	584.69
	<u>\$11,956.26</u>		<u>\$1,026.43</u>

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 17)  
(Not Filled In)

SCHEDULE G—BAD DEBTS  
(See Instruction 18)  
(Not Filled In)

SCHEDULE H—DIVIDENDS DEDUCTIBLE  
(See Instruction 19)  
(Not Filled In)

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Ac- quirement	5. Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of Land)	6. Previous years	7. This year	Amount of Depreciation Charged Off
Mill Bldgs.—Lumber	1924-5	New	10 Years	\$ 30,322.72	\$	\$	\$
Machinery & Equipment	1924-9	New & Used	"	114,286.33)	36,290.04		14,869.48
Office Furniture & Equipment	"	"	"	763.95)			

## AFFIDAVIT.

We the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

.....  
 President.

[Corporate Seal]      OTTO H. WAGNER

V. P. and Treasurer.

Sworn to and subscribed before me this 9th day of May, 1930.

[Notarial Seal]      HENRY J. KERN

Notary Public.

A-9. E. Wagner is president, but is out of U. S. so not available for signature.

Attach a separate sheet if any of the above schedules do not provide sufficient space. [70]

1928	General
Dec. 31 Profit and loss	2,980.58
Taxes	756.58
Advertising	17.01
Legal Expenses	146.30
Office Expenses	640.82
Office Salary	600.00
Traveling Expenses	819.87

## DECEMBER 31, 1929

(Payroll) T. M. Operations	764.38	
Stock Subscriptions		764.38
Amt. due C. A. Hayden		
Cr. to his stock acct.		
Depreciation	14,869.48	
Res. for Depreciation		14,869.48
To set up depreciation for year @ 10%		
Officers Salaries	26,000.00	
E. Wagner Salary a/c		13,000.00
O. H. Wagner Salary a/c		13,000.00
Machy. & Eqpt.		500.00
Power House	300.00	
Res. for Depr.	200.00	
Boiler from Biles Coleman		
J 77 Obsolete		

Admitted in evidence Sept. 11, 1934. Petitioner's Exhibit 5. [71]

DECEMBER 31, 1929

	Dr.	General	Cr.
Interest	2,750.00		
E. Wagner			500.00
O. H. Wagner			2,250.00
Interest accrued on loans from officers			
Marbod Fire Insee.	1,000.00		
Marbod Contract			917.75
Profit & Loss			82.25
Proceeds of fire insurance on Marbod house destroyed by fire.			
Ranch Operations	1,884.15		
Cost of Production	20,550.49		
Inventory			22,434.64
To charge Cost of Production [Illegible] with Jan. 1, 1929. Inventory.			
Inventory	37,119.33		
Cost of Production			37,119.33
To set up invy. as of 12/31/29.			
Logs	4,200.00		
Lumber	25,140.00		
Stumpage	7,779.33		
Mill Sales	Lumber	44,283.58	
“	Shook	171,586.18	
“	Wood	3,961.33	
Mill Returns			219,831.09
Store	1,376.64		
Mill Returns			1,376.64

[72]



J 149

DECEMBER 31, 1929

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 General
 

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Cost of Shook Sales	17,214.63	
Lumber & Shook Dely		4,109.91
Wood Delivery		2,415.32
Freight on Lumber		8,365.30
Discount (Mill)		2,324.10
Cost of Production	174,981.17	
Shook Bot for Resale		1,773.28
Lumber Purchases		17,642.50
Logging		30,225.16
Mill Operating Exes		31,789.98
Mill Supplies		14,915.99
Factory Expenses		26,257.58
Log Purchases		7,162.79
Truck Operation		1,526.58
Yard Expense		8,912.50
Power House		3,488.15
Repairs to Equipment		11,956.26
Industrial Ins. Med Aid		2,924.51
Insurance Fire		1,094.67
Taxes		441.74
Office Expenses		<del>2,223.56</del>
Traveling Expenses		<del>1,137.11</del>
Depreciation		14,869.48
Mill Returns	17,214.63	
Cost of Sales		17,214.63
Income Misc. Truck hire	515.90	
Mill Returns		515.90

[73]

## DECEMBER 31, 1929

Ranch Returns	1,474.06	
Fifth Street Payroll		240.35
“    “    Water System		649.02
Taxes		584.69
Inventory		<del>1,884.15</del>
Ranch Operations	3,717.80	
Ranch Returns		3,717.80
Legal Expenses	304.40	
Advertising	164.30	
Insurance	5.00	
Office Expense (Tel.)	1.02	
Cost of Production (Tools)	80.30	
Expenses “Misc.”		555.02
Sale of Capital Assets	984.33	
Profit & Loss		984.33
Profit & Loss	452.57	
Rental		452.57
Profit & Loss	115.13	
Ranch Returns		115.13
Profit & Loss	4,759.53	
Interest Expense		4,759.53
		[74]

## E. WAGNER

1929		Amount	Interest	
			@ 6%	@ 10%
Jan. 1	Balance	5,432.57	27.16	
Feb. 1	"	5,006.39	25.03	
Mar. 1	"	5,065.39	25.33	
Apr. 1	"	4,908.71	24.54	
May 1	"	1,616.49	8.08	
Jun. 1	"	1,526.79	7.63	
July 1	"	1,539.92	7.70	
Aug. 1	"	1,441.30	7.21	
Sep. 1	"	1,468.68	7.34	
Oct. 1	"	1,569.93	7.85	
Nov. 1	"	( 113.83)		
Dec. 1	"	( 43.83)		
			147.37	245.62
July 1	Salary (Int. fig. to 12/31)	5,000.00	150.00	
Aug. 1	" "	833.33	20.85	
Sep. 1	" "	833.33	16.68	
Oct. 1	" "	833.34	12.48	
Nov. 1	" "	833.33	8.34	
Dec. 1	" "	833.33	4.17	
Dec. 31	" "	833.34		
		10,000.00	212.52	354.20
Oct. 1	Bonus (Int. to 12/31)	3,000.00	45.00	75.00
			404.89	674.82

Admitted in evidence Sept. 11, 1934. Petitioner's Exhibit 6.

Marked for identification Sept. 11, 1934. Petitioner's Exhibit 6. [75]

## OTTO H. WAGNER

1929		Amount	Interest	
			@ 6%	@ 10%
Jan. 1	Balance	16,096.57	80.48	
Feb. 1	"	16,096.57	80.48	
Mar. 1	"	23,238.16	116.19	
Apr. 1	"	23,238.16	116.19	
May 1	"	20,012.72	100.06	
Jun. 1	"	20,012.72	100.06	
July 1	"	20,012.72	100.06	
Aug. 1	"	20,012.72	100.06	
Sep. 1	"	20,012.72	100.06	
Oct. 1	"	12,512.72	62.56	
Nov. 1	"	12,512.72	62.56	
Dec. 1	"	12,512.72	62.56	
			1,081.32	1,802.20
July 1	Salary (Int. to 12/31)	5,000.00	150.00	
Aug. 1	"	833.33	20.85	
Sep. 1	"	833.33	16.68	
Oct. 1	"	833.34	12.48	
Nov. 1	"	833.33	8.34	
Dec. 1	"	833.33	4.17	
Dec. 31	"	833.34		
		10,000.00	212.52	354.20
Oct. 1	Bonus Int. to 12/31	3,000.00	45.00	75.00
			1,338.84	2,231.40

Admitted in evidence Sept. 11, 1934. Petitioner's Exhibit 7.

Marked for identification Sept. 11, 1934. Petitioner's Exhibit 7. [76]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to petition for review heretofore filed by the petitioner in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board of Tax Appeals, as follows:

(a) Petition for redetermination

(b) Answer of the respondent

(3) The findings of fact and opinion of the Board of Tax Appeals, and the opinion of the Honorable Stephen J. McMahon.

(4) The decision of the Board. [77]

(5) The petition for review, filed by the petitioner in the above cause.

(6) The statement of evidence with Exhibits 1, 2, 3, 5, 6 and 7 attached thereto.

(7) This Praeceptum.

(Sgd) ANDREW G. ELDER

(Sgd) CYRIL D. HILL

Attorneys for Petitioner,  
1261 Dexter Horton Building,  
Seattle, King County, Wash-  
ington.

Personal service of the foregoing Praeceptum, together with a copy of the Statement of Evidence mentioned therein, is hereby acknowledged this 30th day of November, 1936.

HERMAN OLIPHANT

General Counsel,  
Bureau of Internal Revenue,  
Counsel for Respondent.

[Endorsed]: Filed Dec. 3, 1936. [78]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 78, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Prae-*ce* in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 7th day of December, 1936.

[Seal]

B. D. GAMBLE

Clerk, United States Board of Tax Appeals.

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[Endorsed]: No. 8415. United States Circuit Court of Appeals for the Ninth Circuit. E. Wagner and Son, Incorporated, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed December 19, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

